SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 456

RAY INGELS, AS DIRECTOR OF THE MOTOR VEHICLE DEPARTMENT OF THE STATE OF CALIFORNIA, ET AL., APPELLANTS,

vs.

HOWARD MORF, DOING BUSINESS UNDER THE FIRM NAME AND STYLE OF PACIFIC WHOLESALE AUTOMOBILE COMPANY, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA

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[fol. 4]

IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

In Equity. No. 759-S

HOWARD MORF, Doing Business under the Firm Name and Style of Pacific Wholesale Automobile Company, Plaintiff and Appellee; United States Fidelity and Guaranty Company, a Corporation, and Continental Casualty Company, a Corporation, Sureties on Bonds Filed by Plaintiff and Appellee,

vs.

RAY INGELS, as Director of the Motor Vehicle Department of the State of California; Howard E. Deems, as Registrar of the Motor Vehicle Department of the State of California; John C. Corbett, Fred E. Stewart, R. E. Collins, Ray Edgar and Ray L. Riley, as Members of the State Board of Equalization and Constituting said Board in the State of California, and E. Seymour, Defendants and Appellants

NOTICE OF APPEARANCE—Filed September 14, 1936

The undersigned, Pierson & Block, Attorneys at Law, Compton, California, do hereby make and enter their appearance as attorneys of record for and on behalf of the appellees, United States Fidelity and Guaranty Company, a corporation, and Continental Casualty Company, a corporation, and do hereby acknowledge that the following documents were served upon said appellees on the 19th day of August, 1936.

1. Petition for Appeal to the Supreme Court of the United States.
2. Order Allowing Appeal.
3. Citation.
4. Statement of Evidence.

[fol. 5] 5. Statement of Jurisdiction of the Supreme Court.

6. Assignment of Errors on Appeal.

7. Proof of Service.

Dated this 10th day of September, 1936.

Pierson & Block, by Ralph K. Pierson

[fols. 6-12] [File endorsement omitted.]

Received copy of the within Notice of Appearance, this 14th day of September, 1936.

U. S. Webb, Atty. Gen'l of Calif., by Franklin Richards, Deputy Attorneys for Defendants and Appellants.

[fol. 13] In United States District Court

[Title omitted]

Bill in Equity—Filed September 25, 1936

Comes now the plaintiff and for cause of action against the defendants, alleges as follows, to-wit:

I

That plaintiff is a resident and a citizen of the City of Los Angeles, County of Los Angeles, State of California; that plaintiff is, and was at all times herein mentioned, engaged in business in said city, county and state aforesaid, under the firm name and style of the Pacific Wholesale Automobile Company; that prior to the commencement of this action, plaintiff has fully complied with the provisions of Section 2466 of the Civil Code of the State of California with respect to the filing and publication of fictitious firm names.

II

That defendant, Ray Ingels, is the duly appointed, qualified and acting Director of the Motor Vehicle Department of the State of California; that Russell Bevins is the duly [fol. 14] appointed, qualified and acting Registrar of the Motor Vehicle Department of the State of California; that the defendants John C. Corbett, Fred E. Stewart, R. E.

Collins, Ufin Jean Shontz and Ray L. Riley are the duly appointed, qualified and acting members of the State Board of Equalization of the State of California and constitute said Board; that E. Seymour is an agent, servant and employee of the other defendants named herein.

III

That the amount involved in this litigation is in excess of $3,000.00 exclusive of interest and costs.

IV

That since the 15th day of September, 1935, and up to and including the date of the filing of this action, the defendants and each of them, under and by virtue of alleged authority, claimed under and by virtue of an Act of the Legislature of the State of California, denominated Chapter 402, Statutes of 1935 of the State of California, said Act being entitled:

"An Act to regulate the carrywanning of motor vehicles upon the public highways of this state, defining the term "carrywanning" and providing for the licensing of motor vehicles in carrywan and imposing penalties for violation thereof."

have demanded and do now demand that plaintiff, before moving his automobiles into the State of California, obtain a license from the Board of Equalization of the State of California, required of persons transporting property for hire and to pay a fee of $25.00 therefor and to obtain a special permit for each of plaintiff's motor vehicles which he seeks to bring into the State of California and to pay for each of such permits the sum of $15.00.

That a copy of said Chapter 402 of the Statutes of 1935 of the State of California is hereto attached, marked Exhibit "A" and by this reference made a part hereof, with the same force and effect as though set forth in full at this place.

[fol. 15] V

That plaintiff's sole occupation is that of a dealer in automobiles and he is engaged in the business of buying, selling and trading of automobiles and that he has been engaged in such business for several years last past and has

succeeded in building up a business, the value of which he alleges to be in excess of $25,000.00 and from which he has derived a good income and livelihood. That plaintiff has complied with the laws of said city, county and state aforesaid, relating to such business.

VI

That plaintiff, in the occupation and conduct of his said business as an automobile dealer, purchases motor vehicles of the ordinary pleasure type only, in the States of Texas, Louisiana, Arkansas, Tennessee and other southern and eastern states, and drives them from the point of purchase to his place of business in the said City of Los Angeles, State of California;

That at the time plaintiff purchases said automobiles and during the period said automobiles are so driven from said points of purchase in other states to the said place of business of plaintiff in Los Angeles, California, and until the same are sold, plaintiff is engaged solely in interstate commerce:

That the purchasing of said automobiles by plaintiff as aforesaid is essentially necessary to the continued conduct of his business and that if he is deprived of the right to purchase and drive said automobiles into the State of California and over the highways of said state to his place of business in the City of Los Angeles, for the purpose of sale, and of the right to sell the same, he will lose his business and thereby suffer an irreparable injury.

VII

That on or about the 19th day of September, 1935, the plaintiff purchased a 1935 Dodge Sedan motor vehicle at the City of Shreveport, State of Louisiana, bearing 1935 [fol. 16] Louisiana License number 108946, and a 1934 Oldsmobile Coupe motor vehicle in the City of Tyler, State of Texas, bearing 1935 Texas license number 869642; that immediately thereafter he caused said automobiles to be driven to the state line of California, near Blythe, California, in the manner following, to-wit: By causing the said Dodge Sedan motor vehicle to be driven under its own power and on its own wheels, and causing the said Oldsmobile Coupe motor vehicle to be towed on its own wheels, attached to the rear of said Dodge Sedan automobile:

That on or about the 19th day of September, 1935, plaintiff purchased a 1934 Dodge Sedan motor vehicle in the City of Tyler, State of Texas, bearing 1935 Texas license number 865530; that immediately thereafter he caused said motor vehicle to be driven to the state line of California, near Blythe, California, in the manner following, to wit: By causing the said motor vehicle to be driven under its own power and on its own wheels.

VIII

That plaintiff thereupon attempted to cause said motor vehicles mentioned in paragraph VII, to be driven into the State of California, in the manner in said paragraph VII specified, at the place above referred to; that at said times and places the defendant, E. Seymour, an agent, servant and employee of the other defendants herein named, and each of them, did refuse to permit plaintiff's said automobiles to enter the State of California, unless and until the plaintiff should first secure of the Motor Vehicle Department of the State of California, a special permit as to each of said vehicles, for the use of the highways of said state and pay therefor a fee of $15.00 for each of such permits, and further, unless and until he had made an application to and secured from the Board of Equalization, a license required of persons transporting property for hire, and pay a fee of $25.00 therefor; and also until the plaintiff had [fol. 17] produced evidence to the satisfaction of the Motor Vehicle Department and the said defendants named, that all of the laws of the State of California, relating to the transportation of property upon the public highways thereof, for hire, had been complied with by this plaintiff; that plaintiff refused to comply with said demand and that thereupon said defendants, and each of them, their agents, servants and employees, refused to permit said vehicles to be moved into the State of California, upon its public highways in the manner aforesaid; that said vehicles are now at the border line of the State of California; that there is no market for said vehicles at the place where they now are.

That your plaintiff alleges that he is the sole owner of said motor vehicles so purchased and driven as aforesaid, and that he is not engaged in the business of the transporting of property for hire, by motor vehicles upon the public highways of said State of California, in his operation of

said motor vehicles or otherwise; and that when he does bring said motor vehicle or either of them into the State of California, it is not his intention to, and he will not insofar as the operation of said motor vehicles is concerned, engage in the transportation of property for hire by motor vehicles upon the public highways of said state; that he is not now engaged with any motor vehicles within the State of California, in the business of transportation of property for hire.

IX

That it is necessary, in the conduct of plaintiff's said business, to bring said automobiles into the State of California;

That said defendants, and each of them intend to, threaten to, and will continue to make the same demand against the plaintiff in every instance in which plaintiff attempts to move an automobile into the State of California, for the purpose of sale in any of the manners aforesaid, and to [fol. 18] invoke against this plaintiff the penalties imposed by the said laws prescribed, for any failure on the part of plaintiff to secure said permits and pay said fees and charges; that there is no provision of law whereby and whereunder this plaintiff may recover from said defendants, or from the State of California, any sums, fees or charges by him paid or to be paid as aforesaid; that if said defendants be permitted to carry out their aforesaid threats and intentions and to enforce as against this plaintiff the provisions of said statute, and unless said defendants, their deputies, servants, agents and employees be enjoined and restrained from so doing, this plaintiff and his aforesaid business will suffer irreparable loss and injury and the rights of this plaintiff in, and to carry on said business, and the protection to this plaintiff guaranteed under the provisions of Section 8 of Article 1 and under the provisions of the Fourteenth Amendment to the Constitution of the United States will be violated, destroyed and held for naught.

That your plaintiff has no plain, speedy or adequate remedy at law.

X

That plaintiff's business is chiefly the wholesaling of said automobiles, and that he has been so engaged in said busi-

ness for approximately four years last past; that plaintiff has operated and is now operating upon a small margin of profit, because of conditions over which he has no control, and that under his present operations he is unable to make in excess of $15.00 per car so dealt in as aforesaid; that if plaintiff be compelled by the Acts of defendants, and each or any of them, as now asserted and threatened, as aforesaid, to transport said automobiles in any other manner than is described in this complaint, or if he be compelled to pay the sums of money demanded by defendants, and each of them, or be compelled to comply with any of [fol. 19] the demands of defendants and each of them, he will lose money on each and every motor vehicle transaction, thereby making it impossible for plaintiff to continue in business, and thereby making it immediately necessary for plaintiff to discontinue business.

XI

That the said Chapter 402 of the Statutes of 1935 of the State of California is unconstitutional upon the following grounds and for the following reasons, among other things, to-wit:

(a) That said act is in contravention of, and repugnant to Article 1, Section 8 (commonly referred to as the "commerce clause") of the Constitution of the United States, in this;

That said statute places a direct burden upon interstate commerce and is not for the purpose of regulation, but is a revenue measure only;

That said act is not based upon any reasonable basis of licensing, but is arbitrary, discriminating and unfair and its effect is the burdening of business in interstate commerce and is intended to, does and will so cripple plaintiff's business in interstate commerce that it will be impossible for plaintiff to continue in said business;

That said act is in no sense a police regulation of the use of the highways of the state or for the protection of the health, morals or safety of the public;

That said act constitutes an illegal charge upon this plaintiff, for the privilege of engaging in interstate commerce;

That the charges and fees required of plaintiff under said statute are arbitrary, unreasonable and excessive in amount

and bear no reasonable relation to plaintiff's use of the highways of the State of California.

(b) That said Act is in contravention of, and repugnant to the 14th Amendment to the Constitution of the United [fol. 20] States, in this:

That it deprives this plaintiff of his property, to-wit: money he is required to pay for use of the public highways of the State of California, without due process of law;

That it further deprives this plaintiff of his property, to-wit: of his business of buying, selling and dealing in automobiles and of his right to engage in said lawful business, without due process of law;

That it denies to this plaintiff, when engaged in interstate commerce in the State of California, as aforesaid, the equal protection of the law;

That it applies only to those persons, firms or corporations using the highways for transportation of motor vehicles for purpose of sale and does not apply to other persons using said highways for pleasure or purposes other than sale, which distinction and classification is arbitrary and unreasonable;

That said tax and charge is wholly disproportionate to other taxes, fees or other licenses charged by the State of California, either for the registration of vehicles in said state or for vehicles using the highways in said state;

That said tax and charge is exorbitant and arbitrary and unfair to such a degree that the interstate business in which plaintiff is engaged in the State of California will return a revenue to said state in proportion far in excess of other fees, licenses or taxes charged other persons for the use of the highways of said state;

That said statute unreasonably and arbitrarily classifies the business of this plaintiff as the transportation of property for hire, which said classification is arbitrary, unreasonable, and discriminatory.

Wherefore, plaintiff prays this Honorable Court [fol. 21] 1. For a temporary restraining order of this Court directed to the said defendants, their agents, servants, employees and deputies, and all persons acting under and through their authority, respectively, as Director of the Motor Vehicle Department of the State of California, Regis-

tion of Motor Vehicles of the State of California, and its members and constituting the Board of Equalization of the State of California, enjoining and restraining them, and each of them, from enforcing or attempting to enforce, against the plaintiff, the provisions of said Chapter 102 of the Statutes of 1933 of the State of California

3. For a citation directed to said defendants, and each of them, ordering them to appear before a three judge court at a time and place to be hereafter fixed by order of Court, and there show cause, if any they have, why a temporary injunction should not be issued herein as by the law and practice of this court contemplated

4. For a final and permanent injunction upon hearing of the merits of this cause before a three judge court, finally and permanently enjoining each of the said defendants, their agents, accounts, employees and deputies, and all persons acting under or through their authority as such respective officials, from enforcing or attempting to enforce against the plaintiff, the provisions of said Chapter 102 of the Statutes of 1933 of the State of California, and from assessing or attempting to exact from this plaintiff, the payment of any sums, charges or fees in said statute mentioned fully required of him to be paid by reason of his ownership and intended use of the highways of the State of California in the manner hereinabove set forth.

5. Said plaintiff prays for such other and further relief in the premises as to the Court may seem [illegible] and [illegible] [Vol. 22] table and just

Byron J. Walters, Pierson & Black, by Ralph K. Pierson, Attorneys for Plaintiff.

Duly sworn to by Howard Morf. Jurat omitted as prescribed.

[fol. 23] EXHIBIT "A" TO BILL OF COMPLAINT

Assembly Bill No. 2416

Chapter 402

AN ACT to Regulate the Caravaning of Motor Vehicles Upon the Public Highways of This State, Defining the Term "Caravaning" and Providing for the Licensing of Motor Vehicles in Caravan and Imposing Penalties for Violation Thereof

(Approved by the Governor July 6, A. D. 1935)

The People of the State of California Do Enact as Follows:

Section 1. The term "caravaning" as used in this act shall mean the transportation from without the State of any motor vehicle operated on its own wheels, or in tow of another motor vehicle, for the purpose of selling or offering the same for sale to or by any agent, dealer, manufacturers' representative, purchaser or prospective purchaser, whether such agent, dealer, manufacturers' representative, purchaser or prospective purchaser may be located within or without this State. The caravaning of motor vehicles as herein defined shall be considered as the transportation of property for hire by motor vehicle and shall be subject to all the laws of this State relative to the transportation of property for hire by motor vehicle upon the public highways of this State.

Section 2. No person, firm or corporation shall use any highway in this State for caravaning motor vehicles unless and until there shall first have been secured from the Motor Vehicle Department of the State of California a special permit as to each vehicle so caravaned, for use of the highways of this State in caravaning such vehicle, which permit shall be displayed by posting the same upon the windshield of such vehicle or in other prominent place thereon where it may readily be legible. It shall be unlawful to operate three or more vehicles or groups of vehicles in caravan unless a space of at least one hundred fifty feet shall at all times be maintained between each vehicle or group of vehicles being so caravaned.

Section 3. As a condition precedent to the issuance of any special permit provided for in the previous section of this act the Motor Vehicle Department of the State of California shall charge and collect a fee of fifteen dollars for each motor vehicle for which a caravan permit may be issued, whether such vehicle be operated under its own power or in tow of another motor vehicle; provided, however, that no such permit shall be issued by said Motor Vehicle Department unless and until the applicant therefor shall have produced evidence to the satisfaction of said Motor Vehicle Department that all of the laws of this State relating to the transportation of property upon the public highways thereof for hire shall have been complied with.

Section 4. No permit issued under this act for caravaning motor vehicles or vehicles shall be transferable either as between persons or as to the vehicle for which it is issued, and shall only be valid for the trip or trips to be specified in said permit, and in no event shall such permit be valid for a period of more than ninety days after it shall have been issued. Such permit shall contain such information [fol. 24] and be in such form and shall be issued under such rules and regulations as may be prescribed by said Motor Vehicle Department. Such permit shall be conditioned upon the permit-ee complying with all the laws of the State of California and the United States.

Section 5. The fee paid for any caravaning permit issued under this act shall be in lieu of all other registration fees and license fees for the use of public highways in this State by motor vehicle during the period that such motor vehicle may be operated under and in accordance with such permit upon the public highways in this State; provided, however, that nothing in this section shall exempt the owner or operator of such vehicle from compliance, except with respect to fees or license charges, with all laws of this State now or hereafter adopted, relating to the transportation of property for hire.

Section 6. All fees from the issuance of permits collected by the Motor Vehicle Department under this act shall be paid into the general fund in the State Treasury.

Said department shall file with the Controller on or before February first and August first of each year, a detailed account of the receipts of said Department from this source

for the six months next preceding. The moneys so derived by the State are intended to reimburse the State treasury for the added expense which the State may incur in the administration and enforcement of this act and the added expense of policing the highways over which such caravaning may be conducted, so as to provide for the safety of traffic on such highways where caravaning is being conducted.

Section 7. Violation of the provisions of Section 2 or of section 4 of this act is a misdemeanor punishable by a fine of not more than five hundred dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.

[File endorsement omitted.]

[fol. 25] IN UNITED STATES DISTRICT COURT

[Title omitted]

TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE
Filed September 25, 1935

Whereas, in the above entitled cause it has been made to appear by the verified bill in equity duly filed herein, upon the grounds of the unconstitutionality of Chapter 492, of the Statutes of 1935, of the State of California, and upon further grounds that immediate, great and irreparable injury and damage will be caused to the plaintiff before the hearing of the application for interlocutory injunction can be had, and it appearing that the plaintiff has no plain, speedy or adequate remedy at law, that the issuance of a temporary restraining order, preliminary to hearing upon the application for an interlocutory injunction is proper and that plaintiff is entitled thereto, suspending and restraining the enforcement, operation and execution of such statute by restraining the action of the defendants and each of them from the acts complained of and about to be committed.

[fol. 26] Now, on motion of the plaintiff, it is Ordered, Adjudged and Decreed that the defendants, Ray Ingels, as

Director of the Motor Vehicle Department of the State of California, Russell Bevins, as Registrar of the Motor Vehicle Department of the State of California, John C. Corbett, Fred E. Stewart, R. E. Collins, Orfa Jean Shontz and Ray L. Riley, as members of the State Board of Equalization and constituting said board, in the State of California and E. Seymour, appear before a three judge court consisting of three United States Judges, one of whom shall be a Circuit Judge, sitting to hear this matter at 10:00 o'clock A. M. at the United States Court House, Los Angeles, California, on the 4th day of October, 1935, and then and there to show cause, if any they have, why an interlocutory injunction as prayed for in said bill should not issue.

And it is Further Ordered that pending the hearing and determination of said interlocutory injunction that the defendants, Ray Ingels, as Director of the Motor Vehicle Department of the State of California, Russell Bevins, as Registrar of the Motor Vehicle Department of the State of California, John C. Corbett, Fred E. Stewart, R. E. Collins, Orfa Jean Shontz and Ray L. Riley, as members of the State Board of Equalization and constituting said board, in the State of California and E. Seymour, and each of them and their agents, servants and employees and all other persons acting under, through or by the authority of them or either of them, or by virtue of their said office, be and they hereby are jointly and severally enjoined and restrained specially and until further order of this Court in the enforcement of the provisions of said Chapter 402 of the 1935 Statutes of the State of California, and from the collection or attempted collection of the fees, taxes, licenses or charges therein provided for as against the plaintiff herein;

[fol. 27] It is Further Ordered that plaintiff give bond with good and sufficient surety in the sum of ($2,000.00) Two Thousand Dollars, which said bond shall be in the manner and form and upon the conditions required by law and approved by the clerk of this Court;

It is Further Ordered that a copy of this order be served on the defendants and each of them herein named and that at least five (5) days notice of the hearing aforesaid be

given respectively to the Governor and Attorney General of the State of California and to each of said defendants.

Dated this 25th day of September, 1935.

Albert Lee Stephens, District Judge.

3:50 P. M.

[File endorsement omitted.]

[fols. 28-42] Subpoena and marshal's returns, showing service on Russell Bevins et al., omitted in printing.

[fol. 43] In United States District Court.

[Title omitted]

Joint Return to Order to Show Cause, and Joint Answer, of all of the Defendants. Filed October 22, 1935

Come now the defendants, jointly, and for return to the order to show cause entered herein by the Court on the 25th day of September, 1935, and for answer to the plaintiff's Bill in Equity, state:

I

Answering Paragraph I of said Bill, the defendants admit that plaintiff is a resident and citizen of the City of Los Angeles, County of Los Angeles, State of California; but as to each and every other allegation of said paragraph the defendants are without knowledge and therefore deny the same.

II

Answering paragraph II of said Bill, the defendants admit the allegations thereof.

[fol. 44] III

Answering paragraph III of said Bill, the Defendants are without knowledge as to the allegations thereof and therefore deny the same.

IV

Answering paragraph IV of said Bill, defendants admit that they intend to enforce the provisions of Chapter 402, Statutes of 1935 of the State of California, except as they may be restrained by this Court. Further answering said paragraph IV, defendants state that it is not required by said Chapter 402 or any other laws of California that persons desiring only to move motor vehicles in caravan, as defined in said Chapter 402, pay the said fee of $25.00 required of persons transporting property for hire, and defendants therefore do not demand that plaintiff pay said fee of $25.00. Further answering said paragraph IV, defendants admit that they have demanded and do now demand, except as restrained by this Court, that plaintiff and all other persons within the terms of said Chapter 402 obtain a special permit for each motor vehicle within the terms of said Chapter 402 which plaintiff and said other persons seek to move upon the highways of California, and that these defendants will require payment of $15.00 for each of such special permits. Defendants admit that "Exhibit A", attached to plaintiff's Bill, is a copy of said Chapter 402, Statutes of 1935, of the State of California.

V

Answering paragraph V of said Bill, the defendants are without knowledge as to the truth of the allegations thereof, and therefore deny the same.

[fol. 45]

VI

Answering paragraph VI of Plaintiff's Bill, defendants admit that plaintiff purchased motor vehicles in Texas, Louisiana, Arkansas, Tennessee, and other southern and eastern states and drives them from the point of purchase to his place of business in Los Angeles. Defendants further state that nothing in said Chapter 402 deprives the plaintiff of any rights which he may desire to exercise as described in said Paragraph VI, but that said Chapter 402 only requires the plaintiff, first, to pay a license fee under the State's police power and as compensation for the use by the plaintiff in his business of the State's highways, and second, to conform to laws and regulations of the State

necessary for the preservation of the State's property and of the safety of the State's inhabitants.

As to whether plaintiff is engaged solely in interstate commerce, as alleged in said Paragraph VI, defendants are without knowledge and therefore deny the same.

VII

Answering Paragraph VII of said Bill, the defendants are without knowledge as to the truth of the allegations thereof, and therefore deny the same.

VIII

Answering Paragraph VIII of Plaintiff's Bill, defendants state that they have refused and will continue to refuse, except as restrained by order of this Court, to permit plaintiff to operate motor vehicles upon the highways of California, in the manner described and defined in said Chapter 402, unless plaintiff shall comply with the requirements of said Chapter 402. As to the description of [fol. 46] vehicles which plaintiff has attempted to operate upon the highways of California without compliance with the terms of said Chapter 402, defendants at this time are without knowledge. Defendants further state that they do not now and will not in the future demand that plaintiff pay a fee of $25.00 for a license required of persons transporting property for hire; that said license authorizing the transportation of property for hire will be issued without charge to persons desiring only to caravan as defined in said Chapter 402, upon application therefor.

As to the allegation in the last sub-paragraph of said paragraph VIII of said Bill, that plaintiff is the sole owner of said motor vehicles so purchased and driven, the defendants are without knowledge and therefore deny the same. As to the further allegations in the last sub-paragraph of said paragraph VIII of said Bill, that plaintiff in operating said motor vehicles as described in said Bill is not engaged in the transportation of property for hire, the defendants are without knowledge; but the defendants further state that the truth or untruth of said allegation is wholly immaterial and irrelevant to any issues made by plaintiff's Bill.

IX

Answering Paragraph IX of said Bill, defendants admit that it is their intention, except as restrained by order of the Court, to enforce the provisions of said Chapter 402 as aforesaid. Defendants further admit that there is no provision of law whereby plaintiff may pay the license fee required by said Chapter 402, and thereafter recover the same from the defendants or the State of California. Fur- [fol. 47] ther answering said Paragraph IX, defendants deny that the enforcement of said Chapter 402 will cause the plaintiff to suffer an irreparable loss and injury or will deprive the plaintiff of any of his rights under the Constitution of the United States.

X

Answering Paragraph X of said Bill, the defendants state that as to the truth of the allegations thereof, the defendants are without knowledge and therefore deny the same. Further answering said Paragraph X, the defendants state that even if the allegations of said paragraph were true, the same are wholly immaterial and irrelevant and have no bearing upon any issue made by the plaintiff's Bill.

XI

Answering sub-paragraph (a) of Paragraph XI of said Bill, defendants deny that said Chapter 402, Statutes of 1935 of the State of California, is unconstitutional. Defendants specifically deny that said Chapter 402 is in contravention of, or repugnant to, the "Commerce Clause" of Section 8, of Article I, of the Constitution of the United States. Defendants further specifically deny all and each and every allegation in said sub-paragraph (a) of Paragraph XI wherein plaintiff alleges and claims that said Chapter 402 violates the "Commerce Clause" of the Constitution.

Further answering sub-paragraph (a) of Paragraph XI, defendants state that the permit fees of which plaintiff complains are a charge made by the State of California in the exercise of its police power, and are a charge for the use made by the plaintiff of its highways in carrying on

the plaintiff's business of caravaning automobiles there, and are reasonable and just in amount, and that the impo- [fol. 48] sition of said fees does not violate the rights of the plaintiff as defined in the "Commerce Clause" of Section 8, of Article I, of the Constitution.

XII

Answering sub-paragraph (b) of said Paragraph XI of said Bill, the defendants deny that said Chapter 402 is in contravention of, or repugnant to, the Fourteenth Amendment to the Constitution of the United States. Defendants specifically deny all and each and every allegation in said sub-paragraph (b) to the effect that said Chapter 402 violates the Fourteenth Amendment to the Constitution. Defendants specifically deny that the license fees required to be paid by said Chapter 402 are disproportionate to the other license fees or charges of any nature whatsoever charged by the State of California for the registration of vehicles or for the use by vehicles of the highways of the State. Defendants specifically deny that the license fees required to be paid by said Chapter 402 are either exorbitant or arbitrary or unfair and deny that said license fees will return a revenue to the State of California excessive in proportion to the other fees, licenses, or taxes charged other persons for the use of the highways of California.

Further answering sub-paragraph (b) of Paragraph XI of plaintiff's Bill, defendants state that, by reason of the special and distinct characteristics of the manner of the use made by plaintiff of the highways of Cailfornia and by reason of the special and distinct characteristics of the operation of "caravaning" motor vehicles as defined and described in said Chapter 402, the classification and separate treatment defined and made in said Chapter 402 is a [fol. 49] reasonable, valid, and just classification, and is based upon actual and substantial grounds; and that said Chapter 402 does not violate the "equal protection of the laws" clause of the Fourteenth Amendment to the United States Constitution, and does not violate the "due process of law" clause of the Fourteenth Amendment.

XIII

For further return, and answer to said Bill, the defendants state that this Court has no jurisdiction of this cause and the plaintiff is not entitled to a temporary injunction herein, nor to any of the relief prayed for in plaintiff's Bill, nor to any equitable relief in this Court whatsoever, because:

(a) Plaintiff's Bill does not allege or set forth any facts or grounds showing any deprivation of plaintiff's rights under that part of Section 8, of Article I, of the Constitution of the United States known as the "Commerce Clause";

(b) Said Bill does not allege or set forth any facts or grounds showing that said Chapter 402 violates any rights of the plaintiff guaranteed to him by the Fourteenth Amendment to the Constitution of the United States.

XIV

Further answering plaintiff's Bill, defendants state that the regulation and charge complained of by plaintiff is not a regulation of, or charge made by, the state for the transportation of motor vehicles in or across the state but is a regulation of, and charge made for the use of, the public highways of the state of California for that purpose. Defendant further states that the public highways are the property of the state of California and have been built and are being maintained at a great expense to the said State [fol. 50] of California; that such highways are a valuable facility and that the use of such highways is a valuable privilege; that the use of such facilities as regulated by said Chapter 402 is a commercial, extraordinary use and that when the highways of the state are so used they are used for direct gain or profit and as a place of business for those engaged in the operations regulated by said Chapter 402; and that the use of such highways as described by plaintiff is of substantial value to the said plaintiff.

XV

Defendants further state that the highways of the State of California, and particularly the highway described in plaintiff's Bill, are regularly and customarily traversed at all hours of the day and night by great numbers of motor

vehicles of every description and by other vehicles and that additional traffic upon such highways adds to and increases the wear of the same and the cost and expense of maintaining them, increases the hazards incident to such use, and increases the cost of supervising and regulating the traffic thereon and that the operations carried on by plaintiff as described in plaintiff's Bill, and by others similarly affected by such Chapter 402, are substantial and involve the movement of a great many motor vehicles and result in a great and substantial volume of such additional traffic.

XVI

Defendants further state that the operations of plaintiff, as described by his Bill herein and by others affected by said Chapter 402, are of an unusual and dangerous character in that vehicles so moved are customarily and ordinarily moved in long processions or caravans, that by the use of tow bars or similar attachments the vehicles so [fol. 51] moved are usually operated in tandem or in pairs, one car operated by a driver and pulling another driverless car, that such two car units are frequently operated with minimum or inadequate space between them and at varying speeds, the speed of such trains being uniformly slower than the ordinary stream of traffic on inclining grades and frequently on level roads and frequently at excessive speeds when being moved down grade; that such cars so transported are usually ordinary passenger cars equipped with motive power and brakes originally designed to propel or restrain only one vehicle and that the speed, pickup and braking efficiency of such cars is usually impaired or reduced by the coupling and pulling of one car by another of such cars; that the coupling of such cars usually results in the impaired vision of the driver of the towing car in the rear view mirror; that the close coupling of such cars and their operation in trains makes it difficult for those overtaking or about to pass such caravans to observe the drivers signals as to his intentions as to stopping or turning; that such cars are usually operated by a preponderance of persons as drivers who have no ownership or interest in the same and who are only concerned with securing their own transportation to California or other destination; that such drivers are usually inexperienced, not familiar with the vehicle or vehicles they are operating, not familiar with the

highways over which they operate, not accustomed to steady driving and for distances as great as those usually negotiated by such caravans; that only a small percentage of such drivers are paid for their services except in the form of the transportation of their persons to destination; that they are frequently underfed and have been driving or continue to drive such cars for excessively long and strenu- [fol. 52] ous hours upon entering and upon continuing through the state.

XVII

Defendants further state that the plaintiff is engaged exclusively in handling used cars or vehicles which have previously been owned and frequently operated for many miles by others and which have been registered under the laws of some other state; that in order to prevent traffic in stolen automobiles and to minimize the theft of automobiles it is essential and necessary for officials of the State of California to carefully scrutinize and devote special effort to the traffic in and movement over the highways of such used cars.

XVIII

Defendants further state that in order to protect the residents of the State of California and others of the state in their use of the public highways and to provide for their safety and convenience in such use, and in order to regulate, supervise, and control the operations over the public highways by the plaintiff and by others regulated by said Chapter 402, it is necessary for the State to maintain a state highway patrol or police force, the maintenance of which is accomplished at a substantial expense to the state of California.

Defendants further state that in order to collect and attain efficiency in the uniform collection of the fees imposed under the provisions of said Chapter 402, it is necessary for the state to maintain officers, agents, and clerks and to furnish supplies and materials at a material and substantial expense to the State of California.

XIX

Defendants further state that in order to protect the safety and convenience of residents of the state and those

[fol. 53] who use the public highways of the state, and to deter motor vehicle operators from reckless driving upon such highways, it is necessary for the state to require the registration and numbering of all motor vehicles used on the public highways of the state for purposes of identification of those who operate such vehicles. That none of the motor vehicles which plaintiff desires to move upon the highways of the State of California, according to the manner of his operations and business, as described in his Bill, are registered in the State of California; and plaintiff desires to move said vehicles for a great distance over the highways of California without any identification or registration of said vehicles in the State of California..

XX

Defendants further state that the business described in plaintiff's Bill and engaged in by plaintiff is primarily a transportation business by means of which plaintiff and others similarly engaged are enabled to purchase cars at places where prevailing markets are low, to move them over the highways in the manner described herein at low cost to places where markets are high due to original transportation costs and to thus sell such vehicles at a profit in competition with other vehicles of identical kind, model, style, age and make which were not originally moved under their own power over the public highways. That automobiles, pursuant to a custom of the trade of many years standing, are sold at nationally advertised prices "freight on board" Detroit, Michigan, or its immediate vicinity, plus railroad freight charges to place of sale and ultimate delivery; that the railroad transportation costs increase with the distance from Detroit and vicinity and that as a result vehicles [fol. 54] originally sold at great distances away from Detroit and vicinity are sold new for substantially higher prices than those sold new at points much closer to Detroit and vicinity. That the original sale price of such vehicles has a proportional and direct relationship to the trade-in and resale value of used cars and that the used car market in such respective areas varies in about the same proportion. That principally, by reason of these facts, plaintiff and others similarly situated are able to buy cars in low markets and sell them below the usual price in such higher markets by reason of the inexpensive or low-

cost method of moving them to such place of sale. That such vehicles are of the identical kind and quality of other vehicles available on such higher markets at such higher prices and that the principal ingredient placed in such cars by plaintiff and others engaged in such caravaning is the transportation in the manner herein described. That the caravaning of such cars is the principal portion of the business so engaged in and that the purchase at low markets and sale at higher markets is purely an incident to such business and that such caravaning is chiefly a transportation business and by its nature may be properly and separately classified and regulated as distinguished from ordinary highway use.

Wherefore, defendants pray that the restraining order heretofore issued be dissolved, for costs of suit, and for such other and further relief as to the Court may seem adequate, equitable and just.

U. S. Webb, Attorney General of the State of California, by Frank Richards, Deputy Attorney General of the State of California, Attorneys for Defendants.

[fol. 55] *Duly sworn to by Ray Ingels. Jurat omitted in printing.*

[File endorsement omitted.]

[fol. 56] IN UNITED STATES DISTRICT COURT

[Title omitted]

DEFENDANTS' EXCEPTIONS TO PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW—Filed June 5, 1936

Come now the defendants and except and object to the proposed Findings of Fact and Conclusions of Law submitted herein, on the following grounds:

Exceptions and Objections to Proposed Findings of Fact Found as True

1

Exceptions to 4th Finding

Defendants except to the 4th proposed Finding of Fact found as true, on the ground that the purpose of Chapter

402, Statutes of 1935, is to be understood and determined by the terms of said Act and all of the other statutes of California and the evidence in this case, and not especially and particularly by the consideration of the other Acts mentioned in said 4th Finding.

[fol. 57] 2

Exceptions to 6th Finding

Defendants except to the 6th Finding on the ground that the evidence shows that the term "caravaning" as defined in said Chapter 402 includes and circumscribes a well defined movement of motor vehicles which presents problems and difficulties not present in movements of motor vehicles not included within said definition, and that the included movement is generally and characteristically a fleet movement, and so preponderantly such as to make any exceptions negligible and immaterial as a matter of fact and law.

3

Exceptions to 7th Finding

The 7th Finding is excepted to for all of the reasons stated in the preceding exception, and on the further ground that the evidence and said Chapter 402 show that the Legislature in enacting said Chapter took into consideration an existing problem and by said Chapter properly defined the class presenting such problem and properly dealt with it. The purpose of the Act is likewise to be ascertained by consideration of other statutes including those imposing safety regulations upon motor vehicle operators, and is not to be limited solely to the provisions of the Act itself. There is no specific complaint as to the effect of said Act upon a single car movement.

4

Exceptions to 8th Finding

Defendants except to the 8th Finding on the ground that it is not supported by the evidence, and because the evidence shows that the movement of a single vehicle, as

[fol. 58] therein described, and the movement of all vehicles included within the definition of "caravaning" does present unusual police problems.

5

Exceptions to 9th Finding

Same as exception to 8th Finding.

6

Exceptions to 11th Finding

Defendants except to the 11th Finding on the ground that plaintiff's bill of complaint and the evidence show that plaintiff's occupation is principally that of transporting used motor vehicles from points where the market price is low to California where the market price is high; that such transportation is the entire basis of plaintiff's business; that the evidence shows that once plaintiff's cars arrive in California they are quickly and easily disposed of, and that the sale of such cars in California is only a minor and incidental part of plaintiff's business.

7

Exceptions to 13th Finding

Defendants except to the 13th Finding on the ground that as soon as plaintiff's automobiles arrive on California soil for the purpose of sale in California they acquire a situs in California and their movement thereafter is in intrastate commerce.

8

Exceptions to 14th Finding

Defendants except to the 14th Finding on the ground that there is nothing in said Chapter 402 which deprives plaintiff of the right to purchase and drive said automo-[fol. 59] biles for the purpose of sale, or of the right of selling the same; and the facts found in said Finding as true are immaterial.

9

Exceptions to 15th Finding

Defendants except to the 15th Finding on the ground that there is no evidence to sustain the same; and that if the said Finding were true that the same, coupled with the allegations of paragraphs VII and VIII of plaintiff's bill of complaint show conclusively that the movements described in said 15th Finding are not in fact, as claimed, single car movements, but constitute a fleet movement, that is, a movement composed of more than one vehicle moved together at one time, that is, at least three vehicles moved together at one time. Furthermore, there is nothing in the record to show that the three vehicles described in said 15th Finding and in said paragraphs VII and VIII of plaintiff's bill of complaint were not a part of a larger caravan.

10

Exceptions to 16th Finding

Defendants except to the 16th Finding on the grounds set out in the preceding exception, and on the grounds that there is no issue made in plaintiff's bill of complaint of the demand of a fee for driving a single motor vehicle or for driving two motor vehicles joined by a tow-bar, and the 15th Finding which is relied upon to support said 16th Finding is itself not supported by the evidence as pointed out in the preceding exception.

11

Exceptions to 17th Finding

Defendants except to the 17th Finding in so far as it pur- [fol. 60] ports to relate to a specific instance of the movement of single cars not in caravan or with other cars or two cars joined together by a tow-bar not in caravan or with other cars.

12

Exceptions to 18th Finding

Defendants except in part to the 18th Finding on the ground that the evidence shows that some of plaintiff's

vehicles are operated for plaintiff by others under contract and that said vehicles are not operated directly under plaintiff's supervision and responsibility.

13

Exceptions to 19th Finding

Defendants except to the 19th Finding on the following grounds. As pointed out above herein plaintiff's business is not chiefly the wholesaling of used automobiles, but is chiefly a business of transporting automobiles from a place where the price is low to a market where the price is high. There is no evidence that plaintiff sells automobiles for delivery in other parts of California or for delivery in the north Pacific states or that he brings automobiles into California in any appreciable quantities not in fleets. There is no evidence to support the Finding that plaintiff operates upon a small margin of profit and that the fee in question would absorb his net profit and ruin his business or any other business. That said finding is immaterial in any event.

14

Exceptions to 20th Finding

Defendants except to the 20th finding on the ground that said Chapter 402 shows by its terms, and considered with other statutes, that the fee therein required is a tax for the [fol. 61] use of the highways as well as a charge under the state's police power.

15

Exceptions to 21st Finding

Defendants except to the 21st finding on the grounds stated in the preceding exception and because the evidence fails to show that the permit fee of $15.00 per car is arbitrarily fixed and is unreasonable in amount, and the evidence fails to show that the increased cost of policing the highways is comparatively small, but shows the contrary.

16

Exceptions to 22nd Finding

Defendants except to the 22nd finding on the following grounds. To the first sentence, on the ground that the

evidence shows that the supply of used cars obtainable within California is so small as compared with the total volume of used cars sold there as to be negligible, and the evidence fails to show that the license charge in question discriminates against or imposes any hardship on those who deal in used cars obtained from within California. To the second sentence, on the grounds stated in the exceptions to the 20th finding, above, and because it is a conclusion not sustained by any evidence.

17

Exceptions to 23rd Finding

Defendants except to the 23rd finding on the ground that the same does not correctly state the terms of said Chapter 402 and is a conclusion unsupported by any evidence.

18

Exceptions to the 24th Finding

Defendants except to the 24th finding on the ground that [fol. 62] the evidence shows that approximately twenty per cent and not twenty-five percent of all cars caravaned into the state of California are brought in by plaintiff.

19

Exceptions to the 25th Finding

Defendants except to the 25th finding on the following grounds. There is no evidence that there is a considerable transportation wholly within the State of California in intrastate commerce of automobiles on their own wheels, singly, in twos coupled, and in fleets of several for the purpose of sale; the evidence shows to the contrary; the evidence shows that such movement of automobiles on their own wheels for purpose of sale as there is in intrastate commerce within the State of California is so negligible as not to affect the validity of the classification made by said Chapter 402, and that such movement of that character as there is in intrastate commerce is conducted in an entirely different manner than the movement included within the classification made by said Chapter 402. Further that such movements of automobiles on their own wheels wholly

within the State are subject to other license fees for such movements. There is no discrimination against plaintiff in interstate commerce.

20

Exceptions to the 26th Finding

Defendants except to the 26th finding on the ground that there is no evidence to sustain the same.

21

Exceptions to the 27th Finding

Defendants except to the 27th finding on the following grounds. The evidence shows that the definition of "cara-[fol. 63] vaning" made in Chapter 402 in fact includes all those who move motor vehicles on their own wheels upon the highways of California by the fleet and towing method, that the movement of vehicles singly is so negligible in quantity as not to affect the classification made by said Chapter, and that a definite police problem is created by the movement of single vehicles not in fleets moved on their own wheels for purpose of sale and that the movement of four vehicles or less in such manner and for such purpose does constitute a police problem.

22

Exceptions to the 28th Finding

Defendants except to that part of the 28th finding after the semi-colon therein on the ground that if it is a conclusion of fact it is not sustained by the evidence, and that if it is a conclusion of law it is not correct as a matter of law.

23

Exceptions to the 31st Finding

Defendants except to the 31st finding on the following grounds. Said finding consists largely, if not entirely, of conclusions of law, and said conclusions, where they do not consist of recitals of the provisions of said Chapter 402 are not correct. The provision in said Chapter 402 to the effect that the permit fee of $15.00 per car is in lieu of all

other fees means precisely what it says, that it is in lieu of all other fees for the use of the public highways. All other persons moving vehicles upon the highways of California for the purpose of gain, as is plaintiff, are required to pay license fees.

[fol. 64] 24

Exceptions to 32nd Finding

Defendants except to the 32nd finding as an incorrect and unwarranted conclusion, and as being not a finding of fact but a conclusion of law.

Defendants also except to the proposed findings of fact commencing after the 32nd finding of fact under the caption "It is Not True That", as follows:

25

Exceptions to First Finding

Defendants except to the first finding of fact under the aforesaid caption "It is Not True That", on the following grounds. Said Chapter 402 does, as shown by its terms and other statutes, exact a license fee as compensation for the use of the highways.

26

Exceptions to Second Finding

Defendants except to the second finding on the ground that the evidence and plaintiff's bill of complaint affirmatively show that the use of the highways by plaintiff is an extraordinary use for direct gain and profit and as a place of business.

27

Exceptions to Third Finding

Defendants except to the third finding on the ground that the evidence affirmatively shows that the operations of plaintiff and all other persons within the terms of said Chapter 402 are of an unsual or dangerous character.

[fol. 65] 28

Exceptions to Fourth Finding

Defendants except to the fourth finding on the ground that the evidence shows that the vehicle movement included in the scope of Chapter 402 is characteristically and preponderately by the fleet and the tandem-towing method; that the movement of cars singly and not in fleets is negligible; and that such single movement of cars as there is is properly subject by reason of the manner of operation to the terms of said Chapter 402; that the evidence shows that usually there is no tail light lighted on the towed car.

29

Exceptions to the Fifth Finding

Defendants except to the fifth finding on the ground that the evidence affirmatively shows that the business of bringing cars into the State of California on their own wheels for the purpose of sale has caused a special problem of bringing stolen cars and fraudulently registered cars into the State of California.

30

Exceptions to the Sixth Finding

Defendants except to the 6th finding on the ground that the same is incorrect as a matter of fact or law.

31

Exceptions to the Seventh Finding

Defendants except to the 7th finding on the ground that the evidence affirmatively shows that the movement of automobiles from without to within the State of California on their own wheels for purpose of sale has caused law violations and abuses to such an extent as to warrant the Legis-
[fol. 66] lature in enacting Chapter 402.

32

Exceptions to the Eighth Finding

Defendants except to the 8th finding as an incorrect statement of the facts shown by the evidence and as contrary to the evidence.

33

Exceptions to Ninth Finding

Defendants except to the 9th finding as an incorrect statement of the facts shown by the evidence and as contrary to the evidence.

Defendants' Exceptions to Proposed Conclusions of Law

The defendants except to the proposed conclusions of law on the following grounds:

(a)

That chapter 402, Statutes of 1935 of the State of California, is constitutional and does not violate the "Commerce Clause" of Section 8, of Article I of the Constitution of the United States and does not violate the "Equal Protection" and "Due Process" clauses of the 14th Amendment to the Constitution, or any other part of the Constitution.

(b)

Plaintiff's prayer for a permanent injunction against the enforcement of the provisions of said Chapter 402 should be denied.

Defendants except generally to all of the proposed Findings of Fact and Conclusions of Law upon the following [fol. 67] grounds: such Findings ignore the testimony of defendants' witnesses Cato, Martland, Bevins, Walsh, Dillon, and Osborne which is mostly uncontradicted and which covers many matters not touched upon in plaintiff's evidence; the entire record in the case shows that in fact there does not exist any class of operators or any movement of motor vehicles in whose favor any discrimination is made as against the class included in the act; that the included class is properly defined and included in the act because it

presents a problem peculiar to itself alone and not common to non-included classes; that the included class makes a special use of the highways for commercial gain and profit and that the fee charged is a reasonable police power fee and a reasonable charge for the use of the highways.

Wherefore defendants, having filed these exceptions to the proposed Findings of Fact and Conclusions of Law prior to the Court's making or entering any Findings of Fact and Conclusions of Law, pray that the Court allow these exceptions and sustain the same.

Respectfully submitted, U. S. Webb, Attorney General of the State of California, by Frank Richards, Deputy Attorney General of the State of California.

[File endorsement omitted.]

[fol. 68] IN UNITED STATES DISTRICT COURT

[Title omitted]

FINDINGS OF FACT AND CONCLUSIONS OF LAW—Filed June 8, 1936

The above entitled cause having come on regularly for hearing on the 29th day of November, 1935, at the hour of ten o'clock A. M., before the Honorable Clifton Mathews, Circuit Judge, and the Honorable Albert Lee Stephens and Leon R. Yankwich, District Judges, sitting as a statutory three-judge court, pursuant to section 380, U. S. C. A. (Judicial Code, section 266, amended), Pierson & Block, by Ralph K. Pierson and Samuel P. Block appearing as attorneys for plaintiff, and U. S. Webb, Attorney General of the State of California, by Frank Richards, Deputy Attorney General, appearing as attorneys for defendants; and it having been stipulated that the hearing on the temporary restraining order and order to show cause might be considered, and that the same should be a final hearing of the within cause, and the Court having heard the testimony, and the cause having been submitted, and the Court being fully advised,

[fol. 69] Now, Therefore, The Court makes the following findings of fact and conclusions of law:

Findings of Fact

It is true that:

(1) Plaintiff is a resident and citizen of the City of Los Angeles, County of Los Angeles, State of California; that plaintiff is, and was at all times herein mentioned, engaged in business in said City, County and State aforesaid, under the firm name and style of Pacific Wholesale Automobile Company; that prior to the commencement of this action, plaintiff has fully complied with the provisions of section 2466 of the Civil Code of the State of California with respect to the filing and publication of fictitious firm names.

(2) Defendant, Ray Ingels, is the duly appointed, qualified and acting Director of the Motor Vehicle Department of the State of California; that Russell Bevins was, at the time of the commencement of the within action, the duly appointed, qualified and acting Registrar of the Motor Vehicle Department of the State of California, but has since been succeeded in said office by Howard E. Deems, who is now the duly appointed, qualified and acting Registrar of the Motor Vehicle Department of the State of California; that the defendants John C. Corbett, Fred E. Stewart, R. E. Collins, Orfa Jean Shontz and Ray L. Riley are the duly appointed, qualified and acting members of the Board of Equalization of the State of California, and constitute said Board; that E. Seymour is an agent, servant and employee of the other defendants named herein.

(3) The amount involved in this litigation is in excess of [fol. 70] Three Thousand ($3,000.00) Dollars, exclusive of interest and costs.

(4) The California Legislature of 1935 legislated extensively upon the subject of motor transportation. It adopted "The Vehicle Code" and many other acts relating to the subject of motor transportation, including the so-called Caravan Act. (Chapter 402, Statutes 1935). In section 146.5 of the Vehicle Code it provided for the registration of cars previously registered outside of California. Its purpose was to prevent the importation of stolen cars into California. This District Court, sitting as a three-

judge court, declared said section unreasonable, discriminatory and void. These several acts show that the legislature covered the subject of motor vehicle transportation comprehensively and, through separate but related acts, sought to apply its legislative discretion to all conditions it deemed desirable to treat. The purpose of each act is more easily understood and the expressed purpose in each act becomes more definitely a limitation upon its basic theory and purpose through such information.

(5) The so-called Caravan Act (Chapter 402, Statutes 1935) adopted by said Legislature, reads as follows, to wit:

Chapter 402, Statutes of 1935

AN ACT to Regulate the Caravaning of Motor Vehicles Upon the Public Highways of this State, Defining the Term "Caravaning" and Imposing Penalties for Violation Thereof

(Approved by the Governor July 6, 1935, in Effect September 15, 1935)

The People of the State of California do Enact as follows:

Section 1. The term "caravaning" as used in this act shall mean the transportation from without the State of any motor vehicle operated on its own wheels, or in tow of [fol. 71] another motor vehicle, for the purpose of selling or offering the same for sale to or by any agent, dealer, manufacturers' representative, purchaser or prospective purchaser, whether such agent, dealer, manufacturers' representative, purchaser or prospective purchaser may be located within or without this State. The caravaning of motor vehicles as herein defined shall be considered as the transportation of property for hire by motor vehicle and shall be subject to all the laws of this State relative to the transportation of property for hire by motor vehicle upon the public highways of this State.

Section 2. No person, firm or corporation, shall use any highway in this State for caravaning motor vehicles unless and until there shall first have been secured from the Motor Vehicle Department of the State of California a special permit as to each vehicle so caravaned, for use of the high-

ways of this State in caravaning such vehicle, which permit shall be displayed by posting the same upon the windshield of such vehicle or in other prominent place thereon where it may be readily legible. It shall be unlawful to operate three or more vehicles or groups of vehicles in caravan unless a space of at least one hundred fifty feet shall at all times be maintained between each vehicle or group of vehicles being so caravaned.

Sec. 3. As a condition precedent to the issuance of any special permit provided for in the previous section of this act the Motor Vehicle Department of the State of California shall charge and collect a fee of fifteen dollars for each motor vehicle for which a caravan permit may be issued, whether such vehicle be operated under its own power or in tow of another motor vehicle; provided, however, that no such permit shall be issued by said Motor Vehicle Department unless and until the applicant therefor shall have produced evidence to the satisfaction of said Motor Vehicle Department that all of the laws of this State relating to the transportation of property upon the public highways therefor for hire shall have been complied with.

Sec. 4. No permit issued under this act for caravaning motor vehicles or vehicles shall be transferable either as between persons or as to the vehicle for which it is issued, and shall only be valid for the trip or trips to be specified in said permit, and in no event shall such permit be valid for a period of more than ninety days after it shall have been issued. Such permit shall contain such information and be in such form and shall be issued under such rules and regulations as may be prescribed by said Motor Vehicle Department. Such permit shall be conditioned upon the permit-ee complying with all laws of the State of California and the United States.

[fol. 72] Sec. 5. The fee paid for any caravaning permit issued under this act shall be in lieu of all other registration fees and license fees for the use of public highways in this State by motor vehicle during the period that such motor vehicle may be operated under and in accordance with such permit upon the public highways in this State; provided, however, that nothing in this section shall exempt the owner or operator of such vehicle from compliance, except with respect to fees or license charges, with all laws of

this State nor or hereafter adopted, relating to the transportation of property for hire.

Sec. 6. All fees from the issuance of permits collected by the Motor Vehicle Department under this act shall be paid into the general fund in the State treasury.

Said department shall file with the Controller on or before February first and August first of each year a detailed account of the receipts of said Department from this source for the six months next preceding. The moneys so derived by the State are intended to reimburse the State treasury for the added expense which the State may incur in the administration and enforcement of this act and the added expense of policing the highways over which such caravaning may be conducted, so as to provide for the safety of traffic on such highways where caravaning is being conducted.

Sec. 7. Violation of the provisions of section 2 or of section 4 of this act is a misdemeanor punishable by a fine of not more than five hundred dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.

(6) The term "caravan" as applied to and used in the act under consideration, is a misnomer and leads to misunderstanding. In a metaphoric sense it has come to mean a considerable number of persons journeying in company by several or many vehicles in company. Fleet movement of cars may with propriety be termed "caravans".

(7) The so-called "Caravan Act", although including fleet movement of cars, is not limited thereto. It defines the term "caravaning" as the movement of a single car into California upon its own wheels for the purpose of sale. A tax upon such a single car movement, not in a group or fleet, is one of the specific complaints in this case. [fol. 73] There is nothing in the act that even refers to caravaning as that term is commonly understood, except that not more than three "vehicles or group of vehicles" can be operated legally upon the highways unless spaced one hundred fifty feet apart. This provision applies only to cars for sale that are driven over the highways into California upon their own wheels. There is nothing in the act indicating that the legislature has determined that the

practice of bringing cars into California on their own wheels for the purpose of sale is undesirable or that the wording of the act is intended to prevent, limit or regulate the practice, except as to the specific above mentioned.

(8) There is no police problem resulting from the use of the highways by a single vehicle driven into the State of California on its own wheels for the purpose of sale, and there is no police problem created by such movement differing from the police problem created by any other movement of a single vehicle for any other purpose.

(9) The fleet movement, where made up of more than four automobiles, causes certain traffic difficulties, such as passing the fleet and meeting cars while passing it. In practice it has been shown that the fleet would sometimes stop, affecting the flow of traffic. Where motor police would stop a car in the fleet, those following would sometimes drive so as to interfere with other traffic. The drivers were not always careful as to their automobile lights and the leader car sometimes swayed. Some of the drivers were unfamiliar with the California traffic regulations and some were fatigued. Each and every one of these incited difficulties illustrate rare exceptions rather than rules.

(10) The defendants ever since the fifteenth day of Sep[tol. 74] tember, 1935, have demanded that plaintiff, before bringing his automobiles into the State of California, obtain a special permit for each and every vehicle and to pay for each of such permits the sum of fifteen dollars.

(11) Plaintiff's sole occupation is that of a dealer in automobiles, and he is engaged in the business of buying and selling and trading of automobiles and he has been engaged in such business for more than four years last past, and has succeeded in building up a business, the value of which is in excess of twenty-five thousand dollars, and from which he has derived a good income and livelihood. Plaintiff has complied with the laws of the City, County and State in which he resides, relating to such business.

(12) Plaintiff, in the occupation and conduct of his said business as an automobile dealer, purchases motor vehicles of the ordinary pleasure, or private passenger type only, in the States of Texas, Louisiana, Arkansas, Tennessee, and other southern and eastern States, and drives them from

the point of purchase to [illegible] place of business in the City of Los Angeles, State of California; all of said vehicles are licensed and registered in the State where purchased.

(12) At the time plaintiff purchased said automobiles and during the period said automobiles are so driven from said points of purchase in other States to the said place of business of plaintiff in Los Angeles, California, plaintiff is engaged solely in interstate commerce.

(13) The purchase of said automobiles by plaintiff as aforesaid is essential and necessary to the continued conduct of his business, and if he is deprived of the right to purchase and drive said automobiles into the State of California and over the highways of said State to his place of business in the City of Los Angeles, for the purpose of sale, and of the right of selling the same, as will have his business and the value thereof irreparably injured.

(14) On or about the [illegible] day of September, 1933, the plaintiff purchased a 1933 Studebaker Sedan motor vehicle in the City of Shreveport, State of Louisiana, bearing 1933 Louisiana License number [illegible], and a 1934 Oldsmobile coupe motor vehicle in the City of Tyler, State of Texas, bearing 1933 Texas license number [illegible]. Immediately thereafter he caused said automobiles to be driven to the State line of California, near Blythe, California, in the manner following, to wit: he caused the said Sedan motor vehicle to be driven under its own power and on its own wheels, and caused the said Oldsmobile coupe motor vehicle to be towed on its own wheels attached to the rear of said Sedan motor vehicle.

On or about the [illegible] day of September, 1933, plaintiff purchased a 1934 Dodge Sedan motor vehicle in the City of Tyler, State of Texas, bearing 1933 Texas license number 865530; thereafter he caused said motor vehicle to be driven to the State line of California, near Blythe, California, in the manner following, to wit: he caused the said motor vehicle to be driven under its own power and on its own wheels.

(16) The specific complaints in this case are that the demand for a license fee of fifteen dollars for driving a single motor vehicle, not by float or ground, across the California line from Arizona; and second, the demand for

a license fee of thirty dollars for so driving a motor vehicle with another motor vehicle attached and not in fleet or group movement.

[fol. 76] (17) The defendants refused to permit plaintiff's said automobiles to enter the State of California unless and until the plaintiff should first procure of the Motor Vehicle Department of the State of California a special permit as to each of said vehicles, and pay a fee of fifteen dollars for each of such permits.

(18) The plaintiff is the sole owner of the motor vehicles which he brings into the State of California, and he is not engaged in the business of transporting property for hire. Said vehicles are operated directly under his supervision and responsibility, and not under contract.

(19) Plaintiff's business is chiefly the wholesaling of used automobiles; he sells automobiles for delivery in other parts of the State of California, and a smaller number for delivery in the North Pacific States. He buys automobiles and brings them into California singly, and by twos coupled, and sometimes in fleets of several. Although he has been operating in this manner for several years, no traffic trouble has occurred in connection with his said activity. Although plaintiff's business is large and lucrative, he operates upon a small margin of profit, and the fifteen dollar permit fee for each automobile he brings into California would practically absorb his net profit and would ruin his business, and a large part of the used car business in California.

(20) Chapter 402, Statutes of 1935, does not contemplate or provide for the collection of the fee therein mentioned for the use, construction, maintenance or repair of the public highways. Such fee, as is specifically provided in the Act, is solely for the purpose of reimbursing the State treasury for the added expense which the State may [fol. 77] incur in the administration and enforcement of the act and the added expense of policing the highways over which "caravaning" may be conducted.

(21) The permit fee of fifteen dollars per car required by said Chapter 402, Statutes of 1935, is arbitrarily fixed and is unreasonable in amount. The increased cost of policing the highways caused by the movement of automo-

biles on their own wheels from without the State of California to within the State of California for the purpose of sale is comparatively small and does not justify the excessive and unreasonable amount of the fee, and would be amply met by a license fee of less than one-third the amount charged.

(22) The unreasonableness of the license charge discriminates against the plaintiff who brings cars into the State for sale in favor of those who deal in used cars obtained from within the State of California. The charge bears no reasonable relation to the purpose for which it is collected and in practical effect constitutes a protective tariff and is unconstitutionally burdensome.

(23) The fee permits only limited movement, and is valid only for the trip or trips to be specified in said permit and in no event is the permit valid for a period of more than ninety days after it shall have been issued.

(24) The plaintiff has been engaged in the business of bringing automobiles into the State of California on their own wheels for the purpose of sale for the past four years or more; that he brings into the State of California approximately between twenty and twenty-five per cent of all the cars brought into the State on their own wheels for the purpose of sale; and that during that period none of [fol. 78] plaintiff's drivers have been arrested, and none of his automobiles have been involved in any traffic accident.

(25) Between thirty per cent and forty per cent of such imported cars are driven to and across the California state line and upon the public highways of the State of California, upon their own wheels and for the purpose of sale, singly, and not in company with other automobiles.

(26) There is considerable transportation wholly within the State of California in intrastate commerce of automobiles on their own wheels, singly, and in twos coupled, for the purpose of sale. Under the provisions of said Chapter 402, such movements of automobiles wholly within the State are not subject to the said fifteen dollar fee, and there is no other law of the State of California imposing a similar or other fee for such movement in intrastate commerce.

(27) The classification created by said Chapter 402, Statutes of 1935, is based upon the following; first, that the vehicle be on its own wheels; second, that such vehicle come from without the State of California into the State of California; and, third, that the vehicle be for sale. These three elements and acts in and of themselves are legal, but when joined together, by virtue of said Chapter 402, become illegal unless the permit fee is paid and the route of travel specified, and such permit is valid not to exceed ninety days in any event. The basis of such classification has no relation to the purpose of the act, to-wit, the regulation of "caravaning" as defined in the Act. Although including fleet movement of cars, which may with propriety be termed caravaning, it is by no means limited thereto, but defines the term "caravaning" to include the movement of a single [fol. 79] vehicle and to groups of vehicles less than five upon their own wheels into California to be sold. No police problem is created by the movement of a single vehicle in such manner and for such purpose. That the movement of four vehicles or less in such manner and for such purposes constitutes no police problem.

(28) The plaintiff is not a common carrier, accepts no article for transportation for hire and transports only his own property.

(29) The defendants intend to and will enforce the provisions of said Chapter 402, Statutes of 1935, unless restrained from so doing.

(30) The plaintiff has no plain, speedy or adequate remedy at law.

(31) While there is a provision in said Chapter 402 to the effect that the licensing fee of fifteen dollars per car is in lieu of all other fees, this provision is meaningless and of no benefit to the plaintiff. Such provision merely exempts the importing car operator from paying fees required of carriers defined and provided for in the other motor vehicle acts. But there is nothing in any act that requires the payment of any such fees by plaintiff or persons in like circumstances. The purchaser of the imported car must pay the regular State automobile license fee and must pay the property taxes placed upon the car in the same manner and to the same extent as any other car purchaser pur-

chasing a car obtained from within the State and which car has not been brought from without the State in the manner contemplated by said Chapter 402.

(32) The enforcement of the provisions of said Chapter 402, Statutes of 1935, will deprive plaintiff of rights guar- [fol. 80] anteed to him under the "Commerce Clause" of Section 8 of Article I, and under the "Equal Protection" and "Due Process" Clauses of the 14th amendment of the Constitution of the United States.

It is not true that:

(1) That Chapter 402, Statutes of 1935, exacts a license fee as compensation for the use, construction maintenance or repair of the public highways of the State of California.

(2) That the use of the highways of the State of California by the plaintiff is an extraordinary use or for direct gain or profit, or as a place of business.

(3) That all vehicles brought into the State of California on their own wheels for the purpose of sale are moved in fleet or by the tandem-towed method; that usually there is no tail light on the towed car. More than fifty (50%) per cent of such cars are moved in fleet.

(4) That many stolen cars and cars with fraudulent registrations are brought into the State of California by persons engaged in the automobile business and in the business of bringing cars into the State of California on their own wheels for the purpose of sale.

(5) That, without the so-called caravan act, said vehicles could move over the highways of the State of California without registration and without identification.

(6) That the movement of automobiles from without the State of California into the State of California on their own wheels and for the purpose of sale have resulted in many law violations and abuses, as compared with other operations of automobiles, or that such movement usually or [fol. 81] ordinarily results in law violations and abuses.

(7) That the towed vehicle usually or ordinarily swings or skids or fails to follow the towing car on curves, or at all, except as affirmatively stated in these findings.

(8) That the drivers of such vehicles become careless or that the manner or method of driving said vehicles is in any manner different from that in which other vehicles of like character are driven or towed, or at all except as is affirmatively stated in these findings.

CONCLUSIONS OF LAW

Chapter 402, Statutes of 1935, of the State of California, is an unconstitutional exercise of legislative power, and is, therefore, void, as violative of the "commerce clause", and of the "equal protection" and "due process" clauses of the Fourteenth Amendment of the United States Constitution; and that the plaintiff herein is entitled to a permanent injunction against the enforcement of the provisions of said Chapter 402, Statutes of 1935, of the State of California.

Dated at Los Angeles, California, this 6th day of June, 1936.

Clifton Mathews, Circuit Judge. Albert Lee Stephens, District Judge. —— ——, District Judge.

[File endorsement omitted.]

[fol. 82] IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

In Equity. No. 759-S

HOWARD MORF, Doing Business under the Firm Name and Style of Pacific Wholesale Automobile Company, Plaintiff,

vs.

RAY INGELS, as Director of the Motor Vehicle Department of the State of California; Russell Bevins, as Registrar of the Motor Vehicle Department of the State of California; John C. Corbett, Fred E. Stewart, R. E. Collins, Orfa Jean Shontz and Ray L. Riley, as Members of the State Board of Equalization and Constituting Said Board in the State of California; and E. Seymour, Defendants

DECREE FOR PERMANENT INJUNCTION—Filed June 8, 1936

This cause came on to be heard on the 29th day of November, 1935, and was argued by Counsel, and thereafter submitted; and upon consideration thereof,

Now Therefore, it is Ordered, Adjudged and Decreed, vis:

1. That the defendants, Ray Ingels, as Director of the Motor Vehicle Department of the State of California, Russell Bevins, as Registrar of the Motor Vehicle Department of the State of California, John C. Corbett, Fred E. Stewart, R. E. Collins, Orfa Jean Shontz, and Ray L. Riley, as members of the State Board of Equalization and constituting said Board in the State of California, and each of them, and their agents, servants and employees and all other persons acting under, through or by authority of them or either of them, or by virtue of their said office, be, and they hereby are jointly and severally enjoined and restrained, specifically and absolutely from enforcing against the plaintiff [fol. 83] herein the provisions of Chapter 402, Statutes of 1935, of the State of California.

2. That the bonds heretofore given by plaintiff herein under the temporary restraining order be, and the same are hereby exonerated.

Defendants, and each of them, are granted exceptions.
Dated June 6th, 1936.

Clifton Mathews, Circuit Judge. Albert Lee Stephens, District Judge. Leon R. Yankwich, District Judge.

Decree entered and recorded June 8, 1936. H. S. Zimmerman, Clerk, by Theodore Hocke, Deputy Clerk.

[File endorsement omitted.]

[fol. 84] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDERS SUBSTITUTING PARTIES DEFENDANT—Filed July 20, 1936

It is Hereby Ordered that H. E. Deems be substituted in the place and stead of Russell Bevins, as a defendant herein.

Dated July 20, 1936.

Albert Lee Stephens, Judge.

It is Hereby Ordered that Ray Edgar be substituted in the place and stead of Orfa Jean Shontz, as a defendant herein.

Dated July 20, 1936.

Albert Lee Stephens, Judge.

[File endorsement omitted.]

[fol. 85] In United States District Court

[Title omitted]

Statement of Evidence—Filed October 7, 1936

For the purpose of completing the record in the above entitled cause respecting the proceedings had therein in the District Court of the United States for the Southern District of California, Central Division, and to enable the parties to have said proceedings, and the judgment, orders and decree entered therein reviewed on appeal, the Court does certify that the following proceedings were had in said cause.

Be it Remembered that the above entitled cause came on regularly for hearing on the 29th day of November, 1935, at the hour of ten o'clock A. M., before the Honorable Clifton Mathews, Circuit Judge, and the Honorable Albert [fol. 86] Lee Stephens, and the Honorable Leon R. Yankwich, District Judges, sitting as a statutory three-judge court, pursuant to section 380, U. S. C. A. (Judicial Code, Section 266, amended) upon plaintiff's application for an interlocutory and permanent injunction, Pierson & Block, by Ralph K. Pierson and Samuel P. Block, appearing as attorneys for plaintiff, and U. S. Webb, Attorney General of the State of California, by Frank Richards, Deputy Attorney General of the State of California, appearing as attorneys for defendants, and the following evidence was received, to-wit:

Walter M. Walsh, called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

I am a California Highway Patrolman and have been such for five years and four months. I am stationed in

Imperial County, my headquarters being at El Centro. I patrol the highway in an area from Brawley to the Trifolium truck inspection point, about sixteen miles from Brawley. The highway I patrol is known as U. S. 99 or State Route 26, and it crosses into Arizona at Yuma.

In carrying out my duties, I have come in contact with caravan cars, on my beat, on one or two occasions while going to the office to make out my reports.

There are approximately ten to forty cars in a caravan. In enforcing regulations relative to caravan cars, I make as good a check as I can as to their lights, and on most every occasion I have to stop them where they were following too closely and send them out at a safe distance so that if there were any cars that wanted to pass, they could do so without causing any wrecks.

I have come in contact with the drivers of these cars and [fol. 87] only on rare occasions are they residents of this state, and the residents of California are the ones in charge of the caravan, and their assistants. There is a man in charge of the caravans who runs back and forth and acts as a "Trouble Shooter". These drivers commit violations of the traffic laws of this State in driving the cars. At the Trifolium truck inspection point, there is an Imperial County Deputy Sheriff inspecting outgoing freight and a United States Border Patrol Inspector. The station is well lit up and there are lighted signs from three hundred feet south to the station. The Patrol Inspectors and I get out with flashlights, and flag down the first car in the caravan, but the rest of the cars go to the right and left on the wrong side of the road in front of oncoming traffic, causing such traffic to forfeit its right of way and drive on the shoulder of the road. No more than one car is ever hitched on as a trailer. The lights on the cars are never up to what they should be. Last Saturday at seven o'clock, there was a caravan going through, with stickers on the windshields which I believe said "Pacific Wholesale Auto Company". I passed by and stopped the one in front. He was rather slow about stopping, and apparently didn't know what a siren was. I got him over on the side of the shoulder, parked in front of him, and started to write out a light car-, and I looked back, and there were six of them parked on the highway and before I could get the situation under control, there were two trucks and trailers blocked on the highway. I estimate there were about 34 cars in

that caravan. Eight of these cars were travelling about 35 feet behind the car in front.

When one vehicle is towing another, in some cases they are tied bumper to bumper. This, in making a turn, causes the car in front to pull, to make a wide turn, not giving the [fol. 88] safe operation there would be if there were a tow bar, or a tow chain, with somebody in back. I do not think this would affect traffic coming in an opposite direction unless it causes the driver to drive on the left hand side of the road. They do not have chains in connection with the tow bars.

The general way of equipping the cars for towing outside of being connected with bumpers, is to have a type of bar which is fastened on to the front car and then, I believe, is fastened on to the axle and there is a connection that goes back to what I believe is called the radius rod. About forty per cent (40%) of those cars that I have had to stop have been on account of the car behind whipping, swaying from one side to the other and on many occasions crossing the center line. I stop them and make them tear it down and do not let them start until they have passed inspection. A safety chain is required under the traffic law. Some of these tow cars have safety chains and some do not. I have insisted on chains, but I have never had much success with it.

With respect to the amount of time I spend in checking the caravan cars as they come in: I patrol what is called a congested area. To enumerate one particular night, last Saturday night, I spend 57 minutes in one spot. The trouble shooter apparently was ahead for he did not appear. I then went on to the inspection point, which is the end of my congested area, and they "ganged up" when they were flagged down. I told them the distance they should keep, and I had to take one hour and ten minutes to go beyond my congested area to keep the road clear for oncoming traffic. I followed these caravan cars for a distance of from 20 to 30 miles. I have never given any of these drivers a citation for violations of the traffic laws. I can't [fol. 89] get a proper address when they are non-residents. I instructed them as to what they should do in order to abide by the laws. I noticed several of these caravans carrying passengers. I have noticed four or five cars with five people, three in the back seat and one beside the

driver. I have noticed women carrying children, little children too small to walk.

I have not counted any accidents on my beat by reason of these caravans, relative to private cars.

[fol. 90] The conditions which I have described are typical of the conditions which I have observed during the period I have been employed upon that highway, extending back for a year and a half. I can recall a caravan of Studebakers, new cars, coming through from South Bend, Indiana for delivery in San Diego which was an exception. It differed from the typical condition I have described in that the cars followed at a safe distance from each other, kept on the right side of the road, had tow bars with the safety chain, good lights and good experienced drivers. Many times I have had to stop caravans to make them put in operation the lights on the rear of the towed car.

Cross-examination:

I have been on the beat I mentioned for five years, and have observed caravanning on that beat for about a year and a half. It might be that caravanning has been conducted over U. S. Highway 99 for the past five or six years. In the last year and a half, about two caravans per month have been called to my attention. I have never given a citation to any driver of any caravan. I have observed there is a man in charge of every caravan, but I have never given him a citation, although in practically all instances the man in charge is a resident of the State of California. I have the power to arrest a person for the violation of the California Motor Vehicle laws and take him before a magistrate. On the occasions which I spoke of, last Saturday, where I found numerous violations of the Motor Vehicle laws, I did not give a citation, nor did I take the driver before a magistrate.

In all instances that I observed caravans, there have not always been a car hitched to another automobile, but there would be one or two where they would be towing another [fol. 91] car. I do not know how many automobiles, single, without any cars towed to them, or attached to them, come over my beat in any single day.

It is possible for a single automobile to be brought in from Arizona, into California, for the purpose of sale, by

itself, in the ordinary lane of traffic, and I would have no particular occasion to know that such automobile was brought into the State of California for the purpose of sale, unless I stopped it, and I would not stop it unless there was a violation of some of the laws of the State of California, any more than I would stop any other car except for a traffic violation.

If a car is brought into the State of California from the State of Arizona, alone, not towing any other automobile, and for the purpose of sale in California, there would be no more danger or hazard created on the highways of California than if the same automobile were driven into California because the driver intended to move in and live in California, providing the laws in each case were observed. In enforcing the laws of the California Vehicle Act, it makes no difference to me where the cars come from or where they are going, so long as they observe the law. The minute I notice a violation of the law, it is my duty to stop it, and the fact that the cars come from without the State makes no difference. If these automobiles were started from Holtville, California, and driven to San Francisco, California, they would be just as much a hazard on the road if driven in exactly the same manner as those coming from without the State, if they had incompetent drivers and they violated the laws. If these cars were towed together in exactly the same manner as cars from without the State of [fol. 92] California, they would react in exactly the same manner. The California Vehicle Code provides for safety chains between automobiles, and this is a recognized standard principle for towing vehicles in California, and it is permissible and lawful. I do not know of any law that prevents an automobile from towing another automobile. I arrest violators of the Motor Vehicle Act, and also give some a warning and let them go. With respect to the approximate number of citations I issue, in one month: we have an officer's stop card that we fill out, we have a truck report card, and our citation book. In the month of October I issued about 28 citations and made about 112 light stops and about 100 other stops; that would be about 212 stops in 28 citations, or a little better than one-eighth. Sometimes it runs less and sometimes more than that in a month.

These cars that are brought in from without the State of California for the purpose of sale, which is termed caravanning, are stopped at the border. I have not observed a California permit on any of these cars. They are stopped at the border by a branch separate from ours. The California Highway Patrol, of which I am a member, has to do with the enforcement of the laws governing the operation of motor vehicles. They have a branch separate from ours over there, a registration office, which takes care of stopping the cars.

RAY B. DILLON, called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

I am a traffic officer of the State of California, with the California Highway Patrol, and have been such an officer for approximately eight and one half years. I police twenty miles east of Banning, and west to the San Ber- [fol. 93] nardino County line which is 14 miles west of Banning. The name of the highway which I police is California Highway No. 26, or U. S. Highway 99. I have come in contact with the caravanning of motor vehicles clear across my territory, and I have observed the manner in which said cars are driven, and the character of such cars. I have observed violations of the Motor Vehicle Act of the State of California by the drivers of these caravan cars. The violations which I have noticed are, following the preceding vehicle too closely, no safety chains between the vehicles, driving in the center of the highway, passing other vehicles without sufficient clearance between vehicles approaching, no tail lights, glaring headlights, and operators of vehicles having no California operator's license. The average number of cars in a caravan is from eight to thirty or thirty-five cars. I have issued citations to drivers of those cars approximately six or eight times, and they have not appeared in Court on those citations. I have made arrests and thereafter taken them into court instead of giving citations.

E. Raymond Cato, called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

I am and have been ever since the 8th day of January, 1931, Chief of the California Highway Patrol. My duties are to administer the affairs of the organization, lay plans and direct enforcement as prescribed by the Motor Vehicle Code.

Caravaning of automobiles into the State of California has required additional supervision of traffic on the highways of the State and the assignment of additional officers to border counties and highways leading into the State [fol. 94] from other states. It has also required additional clerical work to handle warrants which lie dormant and which were issued for caravan drivers.

In the years 1931 and 1932 particularly, caravaning of motor vehicles into the state was called to my attention by complaints from citizens. Committees of citizens called on me in Sacramento and insisted that we stop caravaning. We could find no law to stop it, so we made a check-up to see what caravaning was, as I was unfamiliar with it at that time. We found fleets of automobiles being towed into the state. Citizens complained that they were a hazard on the highways and were dropping itinerants into the State of California. The matter was brought before the last session of the legislature, and I appeared and testified before a committee of the legislature.

[fol. 95] In January or February of this year (1935), I assigned three additional highway patrolmen to Imperial county, two to Riverside county, four to San Bernardino county, and one to a territory in Nevada county east of Truckee. Since then I have assigned additional men who were appointed only a few days ago, i. e., two additional men to Nevada county, two to Placer county, one district inspector to the southern portion and one to the northern portion of the state. I appointed the district inspectors for the purpose of coordinating the work between the traffic officers and the superior officers in those communities. The appointment of the district inspectors was on account of caravaning, but the assignment of additional officers was not entirely due to caravaning, but to the increase of traffic in recognition of caravaning, that is, we found great fleets of cars coming through and at this time there was no caravan law requiring them to travel fifty feet apart and

wrecks were reported. We had numerous complaints from citizens being crowded off the highways.

With regard to the condition which existed just preceding the passage of the act and the peculiar hazards or dangers attending the practice of caravaning at the time of and just prior to the passage of the act, maybe I can better explain it this way: If we have caravans of people who wish to go from place to place we assign a traffic officer, from one to three men to see that they move with expedition and safety. These caravans coming in have no one to govern them coming into the state, and we put an extra patrol on the highway to see that there is safety on the highway, not alone by reason of the fact that there was a caravan coming in, but the increased traffic on the highway. I am now [fol. 96] speaking of a condition that existed prior to the 6th day of July, 1935.

From the first of the year (1935) until the 6th day of July, 1935, when the Act was passed, I put on approximately six additional men over the whole state because there were caravans on the road. They get a salary of $170.00 per month. If the caravaning business were entirely eliminated these men could be dispensed with on these routes. I would not dispense with their services. I would move them to other locations to work because I need more men. I had to assign an additional captain to the northern territory within the last two weeks also. There are three men whose specific duty is the enforcement of this law; that is, since it was in effect.

Our budget appropriations, if I can recall exactly, was $1,488,000.00 in the 84th fiscal year, which was July 1932, to June, 1933, and the 87th fiscal year was $2,447,000.00 and something, showing a considerable increase due to the increased traffic throughout the state.

It would be almost an impossible task to segregate and say what was due to caravaning. But I have noticed the increase in caravaning the last few years which we hadn't observed previously. In the last year there were approximately 14,000 cars caravaned into the State of California.

The caravans I observed, during the time of the investigation, ran train-like—in other words, they wouldn't permit traffic going in the same direction to pass and caused a hazard from traffic coming from the opposite direction from those who would take a chance to pass. The drivers

of caravan cars do not drive at approximately the maximum speed as resident drivers, I cannot say why. They are unfamiliar with California rules of the road, at least [fol. 97] not observing in some instances and the fact that they drive closely together, and towing another car, creates an additional hazard. If they drive fast in swinging about it creates an additional hazard on the road. These were some of the conditions which lead to the assignment of additional men, and I anticipate putting on more men. None of the six additional men we put on were because of the Caravan Act, but the six men were necessitated by the condition itself prior to the enactment of the Legislature. Since then we have put on additional men to try to enforce the Act. We have employed no additional clerical help in my department because of caravanning of cars into the State, but additional clerical help have been assigned to that particular duty.

There is no caravanning of cars from within the State to without the State to my knowledge. There is transportation of cars where they haul them, and there is some caravanning of cars within the State from place to place, but it is small. I have seen a few new cars moved from place to place.

Cross-examination:

I have observed some caravanning of automobiles within the state. I wouldn't know definitely, upon seeing a caravan on the highway, which cars were being taken from Los Angeles to San Francisco for the purpose of sale, but I have been at their places of business and have seen the drivers bring them in and heard them say where they were from. I don't know how many of those cars were transported from Los Angeles to San Francisco for the purpose of sale. It would not be a hundred or two hundred a day.

The regulation passed by the legislature of safety chains and the clearance distance of 150 feet helps considerably to lessen the hazards which I have mentioned.

[fol. 98] Before and at the time I joined the department, caravanning was being carried on in the State but I was not familiar with it. However, I soon learned about it. A representative group of the Chamber of Commerce called on me at my Los Angeles office. The basis of their objections was itinerants, principally. There is nothing in the Caravan statute which refers to itinerants.

The pick-up in business and new automobiles being faster and more modern are contributory causes to increased hazard on the highways, not alone on the highways where caravans come in, but on all highways; also, the increase in hauling, trucks, et cetera. All this has considerable to do with it. I have observed, when out on the road, big oil trucks and various other types of commercial vehicles that had trailers behind them.

At the hearing before the legislative committee, I gave facts principally regarding itinerants into the state, and not so much at that time about caravanning, but it led into caravanning. At first the legislature intended to stop caravanning altogether and not to regulate it because it was found directly responsible for bringing an influx of itinerants into the state. In my opinion, that was the real object or one of the real objects, of enacting the Caravan Act, and then the hazard naturally was brought out by the fact of accidents and other contributory factors. The facts I have testified to here about the increased hazard on the roads are the same in character as the facts I testified to before the legislative committee.

There is a serious condition on the road because of caravans, so far as safety is concerned. I would like to [fol. 99] put sufficient patrols to escort every caravan to its destination so as to regulate the movement on the highway with safety to others. I do that for every other sort of caravan that moves over the highways, for any civic organization of any legitimate purpose. We treat caravans the same as parades, and five cars in a caravan should have some one to regulate it. My experience has taught me that if a large number of cars are to be moved, they should be held until a group of 25 or 30 cars is formed and they have three officers relaying with them through the country.

If only three cars were brought in and spaced two or three hours apart, there would be less hazard, and the condition created by three cars would be negligible, depending on the time of arrival, ability of the drivers, and condition of equipment. Four or five cars would constitute what might be termed a parade, so that oncoming traffic cannot pass around them, and therefore makes it necessary to put a regulator there. The only other effective way to handle such a parade other than to have an officer or officers to conduct the parade to its destination is to space the cars.

Two cars to one driver, and sometimes the driver is crowded with passengers, makes it unsafe.

Before the Caravan statute became effective, we regulated caravaning to some extent, so far as ordering the drivers to keep a certain distance from one another, but caravaning did not come over night. This business has grown to where we must take cognizance of it. Previous to the year 1933, we didn't do anything about it. Then we first began to assign additional men. It was definite last winter that we must do something about caravaning.

[fol. 100] In my opinion, when there are four or five cars together, it becomes a hazard. It is true that an automobile, whether driven alone or with another car, if driven by a person who is reckless, or by a person who does not know how to drive properly, is a menace on the highway.

If the plaintiff Morf was bringing in 25 cars into the State of California, and brought them in singly, three or more at a time, with a half hour elapsing between each group, that would not create a hazard if he were the only one doing it. This applies to trucks on the highways. Too many necessitates control by assigning men to handle them. I have assigned six men to handle it (caravaning).

R. W. MARTLAND, JR., called as a witness on behalf of the defendants, being duly sworn, testified as follows:

I am and have been, since the year 1922, editor of an automobile trade paper. From the summer of 1933 until the present time, I have made a personal investigation of caravanning of automobiles into the State of California, and appeared before the legislative committee which was considering the passage of the act known as the Caravan Statute. Most of the caravans originate in Detroit, South Bend, and Kenosha, Wisconsin. I have followed them through Utah, Nevada, and into California, and in California. The new cars, for the most part, run in caravans ranging from ten to as high as fifty automobiles, one car towing another. The general apparatus used in towing a car is a tow bar, and in some cases, chains are used.

I appeared before the legislative committee relative to the passage of the law covering this subject of Caravaning in March, 1935, upon the invitation of Senator Hornblower

[fol. 101] and the Motorcar Dealers' Association of San Francisco.

I told the legislative committee that in my opinion, formed from my observations, the way caravans were coming through northern California, where I mostly observed them, constituted a very definite traffic hazard, particularly over the Sierra Nevada mountains; that the condition of the drivers generally was one of considerable fatigue by the time they reached California because of the fact that they were working long hours; that the general caliber of the drivers was poor inasmuch as they were transients picked up from newspaper ads in Detroit, South Bend and other places; that California automobile plants employed several thousand men and that caravanning, from an economic standpoint, was very definitely a threat to local employment, in addition to which it was bringing in a number of transients. I also pointed out, in a check made by Mr. Bevins and Mr. Cato earlier in the year, that we had uncovered a number of fraudulent representations of caravanned cars, and that from the standpoint of ethics it was encouraging a very deplorable condition in the marketing of automobiles in this State. My idea in representing these facts was to prevent caravanning entirely, or to regulate it in a manner particularly with reference to registration and control on the highways. The purpose was to reduce caravanning by regulating it, as that would have been the probable effect. These matters which I related to the committee of the Legislature, I still believe to be true and correct, and I testify to the Court now as I testified before the committee. By fraudulent representations. I mean that these cars, which we checked, were represented as new cars to the purchasers, where they had actually been carvanned across the country, and four or five dealers had altered the bills of sale [fol. 102] in 212 cases so that the purchasers had no way of knowing that the cars had been used.

Cross-examination:

When the bill was first discussed, the fee was $50.00 and later cut to $15.00.

Redirect examination:

From my observation there is not a great deal of caravaning of automobiles from within the State to without the

State of California, and from my discussions with dealers and knowing the origin of their cars, there is comparatively limited movement of caravans from one place within the state to another place in the state.

In the caravanning from one point to another point in the state they do not run the cars together like the caravanning of cars from without the state to within the state. Cars that are moving to more favorable markets, such as from Los Angeles to San Francisco, what little movement there is, are driven singly and usually by employees of the dealers, that is, men who work for the dealers. I can't say I have ever seen a convoy of cars moving intrastate. I don't say it doesn't exist, but I have never seen it. So far as I know, they would drive them one at a time and not in a train of cars.

Recross-examination:

I have never gone into plaintiff's place of business and inquired about the number of cars he has sold to dealers in San Francisco or how many cars were transported there from his place of business in Los Angeles. I have gone into places of business of persons buying and selling cars in San Francisco, but not in Los Angeles. The cars are not sent from San Francisco to Los Angeles, but are sent [fol. 103] from Los Angeles to San Francisco. If I saw ten or twelve or fifteen cars going down the highway on the inland route from Los Angeles to San Francisco, I can't say that I would know whether those cars were being transported to San Francisco for the purposes of sale or not.

Russell Bevins, one of the defendants herein, called as a witness on behalf of all defendants, being first duly sworn, testified as follows:

I am registrar of the Motor Vehicle Department of the State of California. From the 1st day of January, 1934, to the 1st day of January, 1935, there were caravan-ed into the State of California 9,663 automobiles, and from January 1, 1935, to November 29, 1935, 14,000 automobiles. The administration expense of issuing caravan permits is about $5.00 for each permit.

The salary of a traffic officer begins at $170.00 per month and increases with his term of service over a period of from three to five years up to ten years, to a maximum of $225.00 per month.

Before the Caravan Statute was passed, cars were sold in California as new cars where they had been caravanned across the states, which is now greatly eliminated by the statute. The border man, or traffic officer, determines whether or not it is a caravan car, and we keep a record of every car that is caravanned into the State of California, which eliminated to a great degree the bringing into the State of stolen cars. Without the Caravan Statute a car could be driven into the State, it plates destroyed and application could be made for a new car registration. No check is made of the car upon such application, for we assume the statement to be true that it is a new car and [fol. 104] base the issuance of a certificate of registration upon such statement. With a caravan car permit, that will be entirely eliminated. In order to administer the Caravan Statute we will have to increase our clerical help in addition to Chief Cato's increase of traffic officers in the Highway Patrol. The additional clerical help will be employed at the border stations, at Sacramento and branch offices. Up to October 31st of this year, approximately 1,960,000 pleasure cars have been registered in the State of California, and the registration is $3.00 per car, so that we have a revenue of approximately $6,000,000.00 from this source. But the mathematical answer doesn't take into account that for expenses we are allowed only 35% of every $3.00 by statute. In addition to the said $6,000,000.00, there is placed in the Highway Department certain other funds which are derived from various sources.

The Caravan Statute was taken from the Motor Vehicle Department of the Legislature and placed either in the revenue and taxation committee or the government efficiency and economy; one or the other. Harry Riley is chairman of the revenue and taxation committee. It is my recollection that the bill was finally passed out of his committe.

LAWRENCE C. OSBORNE, called as a witness on behalf of defendants, being first duly sworn, testified as follows:

I am rate clerk with the Santa Fe Railway. The freight charge for bringing an ordinary, medium-sized sedan car from Detroit to Los Angeles would be about $150.00. The freight rate from Yuma, Arizona, to Los Angeles, is $1.22 per hundred, with a minimum of 10,000 pounds, making a minimum charge for handling $122.00. From Topok the minimum is $139.00.

[fol. 105] Cross-examination:

The rate from San Diego to San Francisco is 84½ cents per hundred pounds for the same minimum, plus a railroad emergency charge amounting to 70% of the total freight charges.

HOWARD MORF, the plaintiff herein, called as a witness on his own behalf, being first duly sworn, testified as follows:

I am engaged in the business of buying and selling automobiles at wholesale. My place of business is located at 616 W. 18th Street, Los Angeles, California. In my said business, I purchase automobiles from time to time in other parts of the country and drive or cause said automobiles to be driven to my place of business at Los Angeles.

In the operation of my business, approximately thirty percent (30%) to forty percent (40%) of the automobiles are driven into the State of California alone, as a single unit, with one driver driving an automobile, and the balance are brought into this state with one automobile towing another.

When I speak of bringing cars in, and thirty percent (30%) or forty percent (40%) being single cars without having a car attached thereto, I mean that such car comes through alone, without any regard to any other cars coming into California.

After I have brought these automobiles into my place of business at Los Angeles, all of them are sold, traded, or disposed of in some way. I bring these automobiles in for commercial purposes, to try to make money on them. I sell [fol. 106] them to various dealers in the State of California.

These dealers come into my place of business from all sections of the state. I do a nice lot of business in San Francisco, San Diego, Riverside, San Bernardino, Bakersfield, Fresno, and all points of the state. These dealers sometimes purchase automobiles from me and transport them from my place of business to their own.

In a period of a month, on the average, 125 to 200 of my cars, or about one-half thereof, are sold outside the City of Los Angeles, such as San Diego, San Bernardino, San Francisco and at other points outside the state such as Seattle and Portland. The dealers come to Los Angeles and buy these cars, and drive them away, the same as new cars.

I have been in business in Los Angeles since 1928 or 1929. I do a wholesale business only, the cars which I bring in being from outside the state and for the purpose of resale to other dealers. The average net profit made by me on each automobile ranges from $10.00 to $15.00, and the money made depends upon volume of business. I have taken cars to San Francisco which were sold there after arrival.

In bringing in an automobile that is towed, we use two systems in connecting the two cars together, one being by tow bar, and the other by safety chains. The tow bar is a bar of steel construction that is hooked on to the rear of the towing automobile and under the front of the towed automobile. I have ridden in one of these automobiles which was towing another, and have stopped the front automobile, and I have had no difficulty in driving an automobile with another towed to it, nor have I noticed any particular hazard in so driving. I have driven an automobile for fifteen years. In my opinion it is possible to drive, [fol. 107] in a careful and prudent manner, an automobile with another automobile connected to it by means of a tow bar, or a safety chain.

In driving these cars into the State of California, I do no radio or newspaper advertising for any individuals to drive the cars. The persons who drive them are in my employ. Part of them have been in my employ for a long time, and a very small percentage are people who are coming to the coast and who come through with the automobile.

There are many dealers and individuals at various places where we operate who make it their business to bring cars through for my firm, or similar firms, receiving a flat fee

of $7.50, $10.00, or $15.00, as agreed upon. A very small percentage of the drivers are people desiring to come out to the coast, and who drive a car here for transportation and possibly meals and gas or oil, or other consideration, depending on the agreement made. As a rule, however, the automobiles driven into the State of California are driven in by people in my employ.

In every instance, the actual buyer, who handles the funds for the company, hires the drivers, and has his regular drivers, comes through with the caravan of automobiles. We also have a "trouble shooter" with these cars, who looks after the mechanical condition of the cars.

I have been driving automobiles into the State of California for approximately three years, and during that time none of my cars have ever been in an accident, nor have any of my drivers ever been arrested.

A "trouble shooter" accompanies any caravan of over four or five cars, an actual caravan of automobiles when [fol. 108] grouped together, and he does not accompany a single car brought in alone. In caravans, the average number of cars is twelve, to which are assigned one "trouble shooter", and one man to every two cars. The trouble shooter and the buyer or manager in charge of these caravans always drive single cars.

I have actually caravanned cars myself from eastern points, and have actually run them through with myself in charge thereof. I have observed caravan automobiles being driven into the State of California, and I have observed nothing about the caravanning of automobiles from without the State of California into the State of California for the purpose of sale that causes me to believe that there is any hazard in the mere driving of these cars. I do not have any trouble, it has not proven hazardous to us, and we have had no accidents.

Cross-examination:

The hiring of drivers for my cars is handled by my caravan manager, buyer, or supervisor in charge of every caravan. The number of supervisors varies from time to time with the number of buyers in the territory. At the present time there are approximately eight such buyers, located

throughout the southern states. We do a limited business at Detroit, Iowa, Nebraska and Illinois, but our main sources of supply are Shreveport, Fort Worth and Dallas.

The average number of cars in a caravan is about 12, and the number of drivers varies. All are in charge of the caravan manager and actual buyer. Their instructions are to have a driver for each single unit coming through and one driver for every hook-up. Occasionally relief drivers are brought through. The supervisors drive a single unit.

[fol. 109] So far this year I have brought into the State of California by caravan approximately 3,000 cars, almost from every point in the United States, but mostly from the southern states. I procured them by mutual agreement or purchase, and contacted the sellers through efforts of my buyers, who are located in various parts of the country, mostly in the southern states, and who are in my regular employ. Their work varies on salary and commission basis. They purchase cars from wholesale houses and distributors, the same as they are sold in Los Angeles, and they contact the automobile firm the same as buyers who buy from me. I deal exclusively in second hand cars. We have bought some second hand cars in Los Angeles. Out of 3,000 cars bought this year, probably 50 were purchased in California. The original idea in organizing in those states is that used cars cannot be purchased in California to any great extent. The reason for my business is that dealers demand used cars and they come to me to get them because I have available cars, and they cannot get them in any other way. If the used car industry is to exist they must get used cars from without the State of California. There are not enough used cars in the state to meet the demand therefor.

[fol. 110] STIPULATION APPROVING STATEMENT OF THE EVIDENCE

It is stipulated and agreed by and between the undersigned parties, by their respective counsel of record, that the foregoing statement of the evidence is a true and correct statement of all of the evidence introduced at the trial of the above entitled cause, reduced to condensed and nar-

rative form in conformity with Federal Equity Rule No. 75 (b), and that the foregoing statement of the evidence with this stipulation attached may be approved by the Court or the Three Judges hearing this cause and upon such approval shall be filed in the clerk's office, and shall be a part of the transcript of record on appeal, all without further notice to the plaintiff and appellees or their attorneys and without the necessity of said Court being reconvened, and at any time and place the said Judges may elect.

Dated this 29th day of September, 1936.

Howard Morf, Doing Business under the Firm Name and Style of Pacific Wholesale Automobile Company; United States Fidelity and Guaranty Company, a Corporation, and Continental Casualty Company, a Corporation, Plaintiff and Appellees, by Pierson and Block, Ralph K. Pierson, Their Attorney of Record. Ray Ingels, as Director of the Motor Vehicle Department of the State of California; Howard E. Deems, as Registrar of the Motor Vehicle Department of the State of California; John C. Corbett, Fred E. Stewart, R. E. Collins, Ray Edgar and Ray L. Riley, as Members of the State Board of Equalization and Constituting Said Board in the State of California; and E. Seymour, by U. S. Webb, Attorney General of California, by Frank Richards, Deputy Attorney General of California.

[fol. 111] ORDER APPROVING STATEMENT OF THE EVIDENCE

The foregoing statement of the evidence, with the written stipulation of the parties to the above entitled action that the said statement of the evidence is true, complete and properly prepared and may be approved by the Court or the Judges thereof, having been presented to the undersigned Judges, and having been examined and found to be true, complete and properly prepared, is approved and is ordered to be filed in the clerk's office and made a part of

the record for the purposes of appeal in this cause to the Supreme Court of the United States.

Dated this 6th day of October, 1936.

Clifton Mathews, Judge of the United States Circuit Court of Appeals, Ninth Circuit. Albert Lee Stephens, Leon R. Yankwich, Judges of the United States District Court for the Southern District of California.

(Endorsed:) Received copy of within Proposed Amended Statement of the Evidence this 4th day of September, 1936. U. S. Webb, Atty. Gen'l, by Frank Richards, Deputy Atty. Gen'l.

[File endorsement omitted.]

[fol. 112] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR APPEAL TO SUPREME COURT OF UNITED STATES —Filed August 14, 1936

[fol. 113] To the Honorable Clifton Mathews, Judge of the Ninth Circuit Court of Appeals, and the Honorable Albert Lee Stephens and Leon R. Yankwich, Judges of the District Court of the United States for the Southern District of California:

Your petitioners, the above named defendants and appellants, Ray Ingels, as Director of the Motor Vehicle Department of the State of California; Howard E. Deems, as Registrar of the Motor Vehicle Department of the State of California; John C. Corbett, Fred E. Stewart, R. E. Collins, Ray Edgar and Ray L. Riley, as members of the State Board of Equalization and constituting said Board in the State of California; and E. Seymour, respectfully show:

On September 25, 1935, the above named plaintiff and appellee filed his bill of complaint herein alleging that Chapter 402, Statutes of 1935 of the State of California, is void as to plaintiff (appellee) as in violation of the

Commerce Clause of Section 8 of Article 1 of the Constitution of the United States, and of the Equal Protection of the Laws and Due Process of Law Clauses of Section 1 of the Fourteenth Amendment to the Constitution, and praying that a temporary restraining order issue forthwith without notice restraining defendants (appellants) from enforcing said Chapter 402 against plaintiff (appellee), and praying that interlocutory injunction issue restraining defendants (appellants) as aforesaid, and praying that on final hearing decree for permanent injunction be entered enjoining defendants (appellants) as aforesaid.

On September 25, 1935, temporary restraining order issued from the court restraining your petitioners, the said defendants and appellants, as prayed in said bill of [fol. 114] complaint, upon plaintiff's filing bond in the sum of $2,000.00 conditioned as required by law, which was done; with United States Fidelity & Guaranty Company, a corporation, as surety upon said bond.

On said day, September 25, 1935, an order issued from the court directed to your petitioners to show cause why interlocutory injunction should not issue restraining them from enforcing said Chapter 402 against plaintiff (appellee) as prayed in said bill of complaint.

Thereafter said temporary restraining order was continued in force until entry of final decree herein, and under the terms of said temporary restraining order as continued in force, plaintiff (appellee) filed other bonds to keep said order in force, conditioned as required by law, and there are now on file in the office of the Clerk of this Court bonds filed by plaintiff (appellee) under the terms of said temporary restraining order, as continued in force, in the total penal sum of $8,000.00 upon which said United States Fidelity and Guaranty Company is surety, and one bond in the penal sum of $10,000.00 upon which The Continental Casualty Company, a corporation, is surety. The said United States Fidelity and Guaranty Company and the Continental Casualty Company are necessary parties to this appeal.

On October 22, 1935, your petitioners filed answer and return to said order to show cause, alleging said Chapter 402 to be constitutional.

On November 29, 1935, this Court of Three Judges was convened and this cause came on for hearing before said

Court on plaintiff's (Appellee's) prayer in said bill of complaint for interlocutory injunction as aforesaid. At [fol. 115] said hearing evidence was introduced by plaintiff (appellee) and by your petitioners and the cause was argued and submitted to the Court, and it was stipulated by said parties that the Court could enter final decree upon the record made.

On June 8, 1936, the Court made and entered its findings of fact and its conclusions of law, and entered its final decree permanently enjoining your petitioners from enforcing said Chapter 402 against plaintiff (appellee).

The said final decree is greatly to the prejudice and injury of your petitioners and is erroneous and inequitable. The errors upon which your petitioners claim to be entitled to an appeal are more fully set out in the assignment of errors and prayer for reversal, filed in the office of the Clerk of this Court, and presented herewith, pursuant to Rule 9 of the Rules of the Supreme Court of the United States.

There has likewise been filed in the Clerk's office, and there is presented herewith a statement as to the jurisdiction of the Supreme Court of the United States as provided by Rule 12 of the Rules of the Supreme Court of the United States.

Your petitioners further state that during the pendency of this appeal they will suffer great and irreparable injury, and the State of California will suffer great and irreparable injury, in the inability of your petitioners to collect from plaintiff (appellee) the permit fees required by said Chapter 402, unless order be made as provided in paragraph one of Rule No. 36 of the Rules of the Supreme Court of the United States, and Equity Rule 74, granting a supersedeas suspending during the pendency of this appeal the permanent injunction ordered by said final decree.

[fol. 116] Wherefore, in order that your petitioners may obtain relief in the premises and have opportunity to show the errors complained of, your petitioners pray for the allowance of an appeal in this cause from said final decree to the Supreme Court of the United States agreeable to the statutes and rules of said Court in such cases made and provided.

Your petitioners further pray that during the pendency of this appeal, the Court order that this appeal shall oper-

ate as a supersedeas and that the permanent injunction ordered in said final decree be suspended upon such terms as to the filing of bond by petitioners and otherwise as to the Court shall seem proper; and that the Court make proper order touching the security required of petitioners in taking this appeal.

Your petitioners further pray for citation as provided by law and Rule 10 of the Rules of the Supreme Court of the United States directed to Howard Morf, doing business under the firm name and style of Pacific Wholesale Automobile Company, plaintiff and appellee, and United States Fidelity and Guaranty Company, a corporation and Continental Casualty Company, a corporation, sureties of bonds filed by plaintiff and appellees.

U. S. Webb, Attorney General of the State of California, by Frank Richards, Deputy Attorney General of the State of California, Solicitors for Defendants and Appellants.

[File endorsement omitted.]

[fol. 117] In United States District Court

[Title omitted]

Assignment of Errors and Prayer for Reversal—Filed August 14, 1936

[fol 118] The defendants, by their solicitors, do on this 14th day of August, 1936, at the time of filing their petition for Appeal to the Supreme Court of the United States from the final decree entered in this cause on the 8th day of June, 1936, by the District Court of Three Judges, file and present to the Court their following assignment of errors on which they will rely in said appeal, and, for such assignment or errors say the Court erred in entering said decree permanently enjoining the defendants from enforcing against the plaintiff the provisions of Chapter 402, Statutes of 1935, of the State of California, and exonerating the bonds given by plaintiff under the temporary restraining orders herein; and erred in making and entering its findings of fact and conclusions of law; in the following respects:

1

The Court erred in holding Chapter 402 to be in violation of the Commerce Clause of Section 8 of Article One of the Constitution of the United States, because Chapter 402 does not discriminate against nor impose an unconstitutional burden upon interstate commerce nor otherwise conflict with the Commerce Clause.

2

The Court erred in holding Chapter 402 to be in violation of the "equal protection of the laws" clause of Section 1 of the Fourteenth Amendment to the Constitution of the United States, because Chapter 402 does not unconstitutionally discriminate against plaintiff or any other person or deny to plaintiff the equal protection of the laws.

[fol. 119]

3

The Court erred in holding Chapter 402 to be in violation of the "due process of law" clause of Section 1 of the Fourteenth Amendment to the Constitution of the United States, because Chapter 402 does not impose unreasonable requirements upon plaintiff and does not deprive him of property without due process of law.

4

The Court erred because on the entire record the plaintiff has failed to sustain the burden of overcoming the presumption of the correctness of the judgment of the Legislature that a valid need of legislation existed and that the class defined in Chapter 402 includes the entire class properly the subject of such legislation, and has failed to overcome the presumption that Chapter 402 is reasonable and non-discriminatory.

5

The Court erred in making affirmatively stated findings of fact (22) and (26) to the effect that Chapter 402 discriminates against plaintiff in his operations in interstate commerce in favor of intra-state commerce, because the evidence on the entire record is insufficient to overcome the presumption of the propriety and non-discriminatory character of the classification made by such Act, and because the evidence shows that the class defined in said Act

is a distinct class constitutionally subject to separate classification, and that there is no other motor vehicle traffic in California in either intra-state or interstate commerce similar or comparable to that conducted by the included class.

6

The Court erred in making affirmatively stated findings of fact (8), the last sentence of (9), and (27), and negatively stated findings of fact (4), (6), (7), and (8), to the effect that there are no unusual or serious safety, traffic or police problems created by the movement of vehicles on their own wheels into California for purpose of sale, because the evidence on the entire record is insufficient to overcome the presumption of the correctness of the judgment of the legislature that such problems existed and merited the enactment of Chapter 402, and because the evidence shows that the class defined in Chapter 402 conducts a specialized form of highway traffic, substantially distinct from other traffic, which creates substantial safety, traffic and police problems differing from those of other traffic.

[fol. 120]

7

The Court erred in making affirmatively stated findings of fact (11) and (19) to the effect that plaintiff's sole occupation is that of dealer in automobiles, and in making negatively stated findings of fact (2) that plaintiff's use of the highways is not an extraordinary use or for direct gain or profit or as a place of business, because the allegations of plaintiff's bill of complaint and the evidence show that the principal element of plaintiff's occupation is that of transporting automobiles upon the highways on their own wheels to market for commercial gain.

8

The Court erred in making affirmatively stated finding of fact (20) and negatively stated finding of fact (1), to the effect that Chapter 402 does not exact a charge for the use of the public highways, because the same are not findings of fact but are conclusions as to the interpretation of the terms of the statute not aided by or based on any evi-

[fol. 121]

dence; and because such Act by its terms shows, and the evidence shows, that the permit fee it requires is

exacted, at least in part, as a charge for the use of the public highways for commercial gain.

9

The Court erred in making affirmatively stated findings of fact (21) and (22) to the effect that the permit fee required by Chapter 402 is arbitrarily fixed and unreasonable in amount, because such fee is a police power license fee and is a tax for a commercial use of the highways, and the evidence does not show that the amount of the fee is excessive either as a police power license fee, or as a tax for the use of the highways, or as both.

10

The Court erred in making affirmatively stated findings of fact (19), (25) and (27) and negatively stated finding of fact (3) to the effect that plaintiff brings cars in singly and not in groups, because the evidence is insufficient to show that plaintiff does so, but does show that the regular and prevailing practice of those within the class defined in Chapter 402 is to move vehicles in fleets and that plaintiff regularly follows the prevailing practice.

11

The Court erred in making affirmatively stated findings of fact (15), (16), (17), and (7), to the effect that plaintiff attempted to move three particularly described vehicles into California, one singly and two joined, but not in groups with other vehicles, and that plaintiff's specific complaint in this case is the demand by defendants that plaintiff pay upon such specific vehicles the permit fee required by Chapter [fol. 122] 402, because plaintiff's bill of complaint does not allege a practice of moving vehicles singly and not in fleets and does not predicate any special claims of unconstitutionality on the ground that the Act applies to singly moved vehicles, but said bill alleges generally that Chapter 402 is entirely invalid and asks that the entire enforcement thereof be enjoined, and does not seek relief with respect to singly moved vehicles or any particular vehicles; and because plaintiff's bill does not claim and the evidence does not show that the vehicles particularly described in said bill were driven singly and not as part of a fleet; and because

there is no evidence of the moving by the plaintiff of the vehicles or of any particular vehicle.

12

The Court erred in making affirmatively stated findings of fact (19) and (14), to the effect that to require plaintiff to pay the fifteen dollars permit fee for each automobile would absorb his profit and ruin his business and a large part of the used car business in California, because there is no evidence to support such finding and because the evidence affirmatively shows the condition of the used car market in California to be such that the purchasers would absorb such permit fee cost.

13

The Court erred in making affirmatively stated findings of fact (7), (23), (27), and (31) in so far as the same attempt to construe Chapter 402, because the same are not findings of fact but are argumentative conclusions as to the construction of Chapter 402 based solely upon the terms of the Act and not upon evidence; and because the evidence sustains the judgment of the legislature as to the necessity [fol. 123] of the legislation and the propriety of the classification.

14

The Court erred in making affirmatively stated findings of fact (4) and (6) and negatively stated finding of fact (5), because the same are not findings of fact, but are argumentative legal propositions and are incorrect as such.

Wherefore, the defendants pray that the said decree be reversed and the District Court be directed to dissolve the permanent injunction therein ordered and to dismiss plaintiff's bill of complaint and to enter judgment against plaintiff and the sureties on his bonds for the amount of damages sustained by defendants by reason of the issuance and continuance of the temporary restraining orders herein, and for costs, and that defendants be granted such other relief as may be appropriate and equitable.

U. S. Webb, Attorney General of the State of California, by Frank Richards, Deputy Attorney General of the State of California, Solicitors for Defendants and Appellants.

[File endorsement omitted.]

[fol. 124] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ALLOWING APPEAL TO SUPREME COURT OF THE UNITED STATES—Filed August 17, 1936

[fol. 125] The petition of Ray Ingels, as Director of the Motor Vehicle Department of the State of California; Howard E. Deems as Registrar of the Motor Vehicle Department of the State of California; John C. Corbett, Fred E. Stewart, R. E. Collins, Ray Edgar and Ray L. Riley, as members of the State Board of Equalization and constituting said Board in the State of California; and E. Seymour, the defendants and appellants in the above entitled cause, for an appeal in the above entitled cause to the Supreme Court of the United States from the judgment of the District Court of the United States for the Southern District of California, Central Division, having been filed herein, accompanied by assignment of errors as provided in Rule 9 of the Rules of the Supreme Court of the United States, and a statement as to jurisdiction of the Supreme Court of the United States as provided by Rule 12 of said Rules, and the said papers having been filed and having been presented to this Court, and the record in this cause having been considered;

It is Hereby Ordered, that an appeal be and it is hereby allowed to the Supreme Court of the United States from the final decree of the District Court of the United States for the Southern District of California, Central Division, entered in this cause on the 8th day of June, 1936, and that the Clerk of said District Court of the United States for the Southern District of California shall, within sixty days from this date, make and transmit to the Supreme Court of the United States, under his hand and seal of the Court, a true copy of the material parts of the record herein, which shall be designated by præcipe or stipulation of the parties or their counsel herein, all in accordance with Rule 10 of the Rules of the Supreme Court of the United States.

[fols. 126-129] It is Further Ordered, that citation issue to Howard Morf, doing business under the firm name and style of Pacific Wholesale Automobile Company, the above named plaintiff and appellee, and to United States Fidelity and Guaranty Company, a corporation, and to Continental

Casualty Company, a corporation, they being sureties on bonds filed by said plaintiff to obtain and continue in force temporary restraining order herein, and necessary parties appellees.

It is Further Ordered, that defendants and appellants file bond for costs in the penal sum of $100.00.

Done by the Court this 14th day of August, 1936.

Clifton Mathews, Circuit Judge. Albert Lee Stephens, District Judge. Leon R. Yankwich, District Judge.

[File endorsement omitted.]

[fol. 130] In United States District Court

[Title omitted]

Præcipe for Transcript of Record—Filed October 7, 1936

[fol. 131] To the Clerk of the District Court of the United States for the Southern District of California, Central Division:

For the purpose of the record on appeal in the above entitled cause, please prepare, certify and transmit to the Clerk of the Supreme Court of the United States, a transcript of the following from the files and records of your Court in said cause:

1. Plaintiff's bill of complaint.
2. Temporary restraining order and order to show cause, and returns showing service thereof.
3. Subpœna and returns showing service thereof.
4. Entry of appearance by defendants.
5. Joint return to order to show cause, and joint answer, of all of the defendants.
6. Statement of the evidence, with stipulation approving same, and order and certificate approving such statement.
7. Defendants' exceptions to proposed findings of fact and conclusions of law.
8. Findings of fact and conclusions of law.
9. Final decree as amended.

10. Orders substituting Howard E. Deems as Registrar of the Motor Vehicle Department of the State of California, as a party defendant in place of Russell Bevins, and substituting Ray Edgar as a member of the State Board of Equalization in place of Orfa Jean Shontz.

11. Petition for appeal to Supreme Court of the United States.

12. Statement of jurisdiction of the Supreme Court of the United States, with opinions of Court and dissenting opinion thereto attached.

13. Assignment of Errors on appeal to Supreme Court, and prayer for reversal.

14. Order allowing appeal to Supreme Court of the United States.

15. Proof of service of copies of the petition for appeal, statement of jurisdiction, assignment of errors, and order allowing appeal, and acceptance of service thereof by [fol. 132] Ralph K. Pierson as attorney for Howard Morf, doing business under the firm name and style of Pacific Wholesale Automobile Company.

16. Citation with acknowledgment of service thereof by Ralph K. Pierson as attorney for Howard Morf doing business under the firm name and style of Pacific Wholesale Automobile Company.

17. Notice of appearance of Pierson & Block as attorneys of record for United States Fidelity and Guaranty Company and Continental Casualty Company, appellees, and acknowledgment of service of documents, dated September 10, 1936, and signed by Ralph K. Pierson.

18. Bond for costs on appeal.

19. This præcipe.

U. S. Webb, Attorney General of California, by Frank Richards, Deputy Attorney General of California.

[fol. 133] Service of the foregoing præcipe for transcript of record on appeal and receipt of copy thereof is acknowledged. It is stipulated and agreed that such præcipe includes all of the record necessary to be included in the transcript on appeal to the Supreme Court of the United States; and that said præcipe may be filed as the præcipe

for transcript of the record on appeal agreed upon by stipulation of the parties hereto.

Dated this 30th day of September, 1936.

Howard Morf, Doing Business under the Firm Name and Style of Pacific Wholesale Automobile Company; United States Fidelity and Guaranty Company, a Corporation; Continental Casualty Company, a Corporation, Plaintiff and Appellees, Pierson and Block, by Ralph K. Pierson, Their Attorney.

[File endorsement omitted.]

[fols. 134-136] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 136-19] In United States District Court for the Southern District of California, Central Division

Eq. No. 759-S

Howard Morf, Doing Business under the Firm Name and Style of Pacific Wholesale Automobile Company, Plaintiff,

vs.

Ray Ingels, as Director of the Motor Vehicle Department of the State of California, Russell Bevins, as Registrar of the Motor Vehicle Department of the State of California, John C. Corbett, Fred E. Stewart, R. E. Collins, Orfa Jean Shontz and Ray L. Riley, as Members of the State Board of Equalization and Constituting Said Board, in the State of California, and E. Seymour, Defendants.

Amended Opinion

Appearances:

For Plaintiff: Pierson & Block, by Ralph K. Pierson and Samuel P. Block.

For Defendants: U. S. Webb, Attorney General, by Frank Richards, Deputy Attorney General.

Before Mathews, Circuit Judge, Stephens and Yankwich, District Judges

Opinion by STEPHENS, District Judge:

The plaintiff seeks to enjoin state officials from enforcing a state law which allegedly invades his rights under the Federal Constitution. Upon issue joined, the case was tried and submitted for decision in a three judge court.

For several years automobiles have been transported upon their own wheels from eastern points for sale in [fol. 136-20] California. The practice increased so that automobiles, or cars, as we shall hereafter generally refer to them, were being brought into California singly and in fleets of from three to forty. In the fleets which were commanded by experienced men there were single cars and cars that were linked together, the leading one pulling the other. Up to November 29th last, about fourteen thousand cars had been rolled into the state during the year, and it is safe to say that the number exceeded fifteen thousand for the full year. The fleet movement where made up of more than four automobiles caused certain traffic difficulties such as passing the fleet and meeting cars while passing it. The fleet would sometimes stop, affecting the flow of traffic. When motor police would stop a car in the fleet, those following would sometimes drive so as to interfere with other traffic. The drivers were not always careful as to their automobile lights and the towed car sometimes swayed. Some of the drivers were unfamiliar with California traffic regulations and some were fatigued.

Plaintiff is a wholesale dealer of used cars with his principal place of business in Los Angeles. He sells cars for delivery in other parts of the state and a smaller number for delivery in the north Pacific states. He buys cars and brings them into California singly and by twos coupled and sometimes in fleets of several. The cars are operated directly under his supervision and responsibility and not under contract. Although he has been operating this way for several years no traffic trouble has occurred in connection with his activity. The specific complaints in this case are, first, the demand for a license fee for driving a single car not in fleet across the California line from Arizona, and, second, demands for license fees for so driving a car with

another car attached. Between 30% and 40% of such imported cars are driven to and across the California state line singly and not in company with other automobiles. Plaintiff's business is large and lucrative but it would appear that the required $15.00 license fee for each car he brings into California would practically absorb his net profit and would ruin his business. It is a serious situation for him and others in like circumstances.

[fol. 136-21] The Basic Theory of National Unity and Equality of the Laws

Preferential laws for state industries and the rivalry for foreign commerce prompted the enactment of tariffs against foreign imports between the states under the old Federation. The situation was very detrimental to national peace and unity and was one of the primary causes for the Constitutional requirement that "all duties, imposts and excises shall be uniform throughout the United States" and for the constitutional provision that Congress should have the power "to regulate commerce with foreign nations, and among the several states, and with the Indian tribes" (Art. I, sec. 8), and that "no state shall, without the consent of Congress, lay any duty on tonnage" (Art. I, sec. 10). Through the Fifth and the Fourteenth Amendments the Constitution has provided for the security of property and for the personal freedom from arbitrary state action under the clauses requiring due process of law and the equal protection of the laws. In many instances the states have legislated in contravention of these "equality" principles, a practice certainly to be guarded against with vigilance equal to that we should use against encroachment of national legislation upon the reserved rights of the states. Through the years the courts have met the difficult problems of construing the enacted statutes under these constitutional rules.

No nice and undeviating line has been discovered marking legislation on the one side in harmony with these constitutional provisions and on the other in conflict with them, but action has been held within a fairly narrow zone of deviation, under new and changing conditions, through the process of classification.

"The equal protection of the law means subjection to equal laws applying alike to all in the same situation. While

reasonable classification is permitted without doing violence to the equal protection of the laws, such classification must [fol. 136-22] be based upon some real and substantial distinction, bearing a reasonable and just relation to the things in respect to which such classification is imposed."

So. Ry. v. Greene, 216 U. S. 400;
Darnell & Son v. Memphis, 208 U. S. 113, at 120;
Continental Baking Co. et al. v. Woodring, 286 U. S. 352.

Classification Cannot be Sustained

The California legislature of 1935 legislated extensively upon the subject of motor transportation. It adopted "The Vehicle Code" (St. 1935, p. 93) and many other acts relating to the subject of motor transportation, including the so-called Caravan Act (c. 402, Stat. 1935), hereunder consideration. In section 146.5 of the vehicle code it provided for the registration of cars previously registered outside California. This District Court sitting as a three judge court recently declared this section unreasonable, discriminatory, and void. (Asher & Ponder v. Ingels et al., No. 8144.) Ostensibly its purpose was to prevent the importation of stolen cars into California; actually it practically prohibited the sale of cars in California that had been registered elsewhere. We have referred to these several acts to show that the legislature covered the subject of motor vehicle transportation comprehensively and, through separate but related acts sought to apply its legislative discretion to all conditions it deemed desirable to treat. The purpose of each act is more easily understood and the expressed purpose in each act becomes more definitely a limitation upon its basic theory and purpose through such information.

The term "caravan" as applied to and used in the act under consideration is a misnomer and leads to misunderstandings. In a metaphoric sense it has come to mean a considerable number of persons journeying in company by several or many vehicles. Fleet movement of cars may with propriety be termed caravans.

But the so-called "caravan act" although including such fleet movement of cars as hereinbefore described is by no means limited thereto. In fact it straightway defines the [fol. 136-23] term "caravaning" as the movement of a sin-

gle car upon its own wheels into California to be sold. There is nothing in the act that even refers to caravaning as that term is commonly understood, except that not more than three "vehicles or groups of vehicles" can be operated legally upon the highways unless spaced 150 feet. But this provision applies only to cars for sale that are rolled by highway into California upon their own wheels. There is nothing in the act indicating that the legislature has determined that the practice of bringing cars into California for sale in this way is undersirable or that the act is intended to prevent, limit, or regulate the practice, except as to the spacing mentioned. There is nothing in the evidence that indicates any police problem resulting from the use of the highway except through fleet or caravan formation. Yet the act is specifically directed to each and every car falling within the prescribed specifications, in fleet or not, to-wit, entering California upon its own wheels and being for sale.

The Supreme Court in Darnell & Son v. Memphis, supra, quoted the following from Guy v. Baltimore, 100 U. S. 434, with approval:

"In view of these and other decisions of this court, it must be regarded as settled that no state can, consistently with the Federal Constitution, impose upon the products of other states, brought therein for sale or use, or upon citizens because engaged in the sale therein, or the transportation thereto, of the products of other states, more onerous public burdens or taxes than it imposes upon the like products of its own territory. If this were not so, it is easy to perceive how the power of congress to regulate commerce with foreign nations and among the several states could be practically annulled, and the equality of commercial privileges secured by the Federal Constitution to citizens of the several states be materially abridged and impaired."

See also Smith v. Cahoon, 283 U. S. 553.

Most, if not all, of the cases relied upon for the validity of the Act are common carrier cases. Cases arising from [fol. 136-24] the business of selling transportation upon and along the public highways. In such cases, subject to reasonableness and to the interstate commerce clauses of the Fed-

eral Constitution, the state denies, permits, regulates, and licenses such businesses. The permits issued and license fees paid are for continuing operation. The vehicles used are usually large and heavy, burdening the road and its roadbed. The difference is obvious between such cases and the instant one, where only ordinary automobiles for which the highways were primarily constructed are transported over but a few miles of highway and for but a few days (usually not a whole day), under the license permit. Expressions in opinions of courts must be read accordingly. It must always be borne in mind that plaintiff is not a common carrier, accepts no article for transportation for hire, and transports only his own property. It would appear that plaintiff has as good a right to the use of the highways as anyone else transporting his own goods; subject, of course, to such police regulation as is reasonable in the circumstances. See Packard v. Banton, 264 U. S. 140; also Buck v. Kuykendall, 267 U. S. 307, at 314.

There is no doubt that classification to be legal need not approximate perfection and as said in Patoine v. Pennsylvania, 232 U. S. 138, the legislature "may direct its law against what it deems the evil as it actually exists without covering the whole field of possible abuses." There are single and fleet movements of cars for sale from point to point within the state, and there are other instances of troublesome use of the highways in the State of California as well as across the state lines. Instance the grouping of large vision obscuring trucks with trailers, the practice of hauling from three to five automobiles upon one lock truck and trailer; and the trailer living quarters so greatly on the increase. Under the doctrine expressed in the Patisone case, such instances do not necessarily invalidate a classification. They are eloquent however of the fact that the defining elements of the Caravan Act classification are not elements of the wrong aimed at and do not gather together the common malfactors but do arbitrarily and unreasonably embrace innocent actors. It should be noticed [fol. 136-25] that the Act extends its burdens to singly driven cars and too cars coupled together that do not add any specific police burden. These cars come into sales competition with cars driven wholly within the state for sale.

The License Fee of $15.00 Per Car is Arbitrarily Fixed and Unreasonable in Amount

The purpose of assessing a fee for each car admitted, expressed in the Act, is to defray the expenses of adequately policing the highways where used in this importing practice, together with the administrative expense of the Act. The full sum collected goes into the general state fund. It is argued that the state may charge for the commercial use of its highways. We have already stated that the use plaintiff makes of the highways is not a privilege that will support a tax under the act for other than such extra policing reasonably required by fleet movement. But aside from that there is no basis in the act upon which a highway tax can be estimated or calculated. As to purposes of fee, see: Interstate Transit Inc. v. Lindsey, 283 U. S. 183; Kane v. New Jersey, 242 U. S. 160; Sprout v. South Bend, 277 U. S. 163, at 170 and 171; Interstate Busses Corp. v. Blodgett, 276 U. S. 245.

There is a provision of the act to the effect that the licensing fee of $15.00 per car is in lieu of all other fees, but this is meaningless. It merely exempts the importing car operator from paying fees required of carriers defined and provided for in the other motor vehicle acts. But there is nothing in any act that requires the payment of any such fees by plaintiff or persons in his circumstances. The purchaser of the imported car must pay the regular state automobile license fees and must pay the property taxes placed upon the car in the same manner as upon any other car and to the same extent. The $15.00 fee cannot be bolstered into reasonableness through recital in the act of unreal benefits to the licensee.

Although there is language in the act that might seem to require it, we think no pains need be taken to discuss in full the claim of plaintiff that he need pay a $25.00 fee (it has not been demanded) before applying for the special [fol. 136-26] permit hereinbefore mentioned nor that he is compelled against his will and against the facts obtaining, to assume the status of a common carrier or a carrier for hire (California Carriers' Act). The so-called Caravan Act itself excludes such fee and if the law attempts to fix upon plaintiff a status not justified by the facts, it goes beyond the power of the legislature and is to that extent void

as to him. Frost Trucking Co. v. R. R. Comm., 271 U. S. 583. It does not affect the other part of the statute, however, and is severable. For the theory of levying tax on vehicles using highways see Interstate Transit Inc. v. Lindsey, 283 U. S. 183; Mallory v. Alabama, 296 U. S. 261; Interstate Busses Corp. v. Blodgett, 276 U. S. 245.

We have examined the California Carrier's Act (c. 223, Stat. 1935) and find that it does not affect plaintiff in any but in the most incidental and inconsequential manner, if at all.

We come directly to the reasonableness of the license fee. As shown by the evidence in this case, during the year 1935 a great increase of automobile use of the highways occurred and for that year at least 15,000 cars were brought into the state for sale under conditions hereinabove recited. The mileage for such cars within the state and the operation upon the highways under the permit is, of course, very little. They go only to the market place. The increased personnel of motor policemen along the routes used by these fleets, for care of all traffic conditions during 1935 up to date of hearing, amounted to but six, although a few more could be used handily. The salary of such officer averages around $200.00 per month. A few inspectors at the border offices have been put on since the passage of the law and there is some clerical expense. Even if the whole increase of expense just indicated were charged to "caravaning" it would seem mathematically demonstrable that the figure of $15.00 per each imported car was not fixed upon any basis of compensating the state for policing and for administering the act. The evidence would indicate that ten additional employees would more than take care of the situation, including the generally increased traffic. Allowing $200.00 per month each, the sum would amount to [fol. 136-27] $2,400.00, or for ten men $24,000.00, per year. Fifteen thousand cars at $15.00 per car would produce $225,000.00. Or looking at it in another way, the distance from border point to point of destination can be traversed in less than a day. The $30.00 charge for each operating unit of two cars would pay for a special police patrol, and even under such regulations a great profit would result. Of course, there is no contention that such a service is required. There can be no doubt but that the license fee is excessive and arbitrary.

The Deputy Attorney General argues that the highways belong to the people and that their use for commercial purposes can be charged for and he sought to show comparative railway charges for transporting automobiles. But this evidence has no materiality here. If the charge of $15.00 is intended as an equalization of transportation costs between railroads and highways, it rests upon an unsupportable premise.

The unreasonableness of the license charge discriminates against the plaintiff who brings cars into the state for sale in favor of those who deal in used cars obtained from within the state. The charge bears no reasonable relation to the purposes for which it is collected and in practical effect constitutes a protective tariff and is unconstitutionally burdensome. Interstate Transit Inc. v. Lindsey, 283 U. S. 183; Young's Market Co. v. Board of Equalization, 12 Fed. Supp. 140 and cited authorities.

The clear statement of principles in Baldwin v. Seelig, 294 U. S. 511, at 521, 523 inclusive, may be related to the instant case Mr. Justice Cardozo likens the attempt by the New York Legislature to fix milk producers' prices in Vermont on a par with those of New York, as a condition of its sale in New York, to customs duties. He says, "Such a power, if exerted, will set a barrier to traffic between one state and another, as effective as if customs duties, equal to the price differential, had been laid upon the thing transported. Imposts or duties upon commerce with other countries are placed by an express prohibition of the constitution, beyond the power of a state, 'Except what may be absolutely necessary for executing its inspection laws.' Con-
[fol. 136-28] stitution, Article I, Section 10, clause 2: • • • 'It is the established doctrine of this court that a state may not, in any form or under any guise, directly burden the prosecution of interstate business'. International Textbook Co. v. Pigg, 217 U. S. 91; 112;"

To burden the movement of plaintiff's own property with a substantial tax, when that sum bears no reasonable relation to the express use of and cause of the levy, constitutes nothing less than a customs duty. To declare such tax legal as an exception would, to use the apt words of the Justice above quoted, "be to eat up the rule under the guise of an exception." Other cases of interest by analogy

are Voight v. Wright, 141 U. S. 62; Brimmer v. Rebman, 138 U. S. 78; Webber v. Virginia, 103 U. S. 344.

The state cannot exact an arbitrary toll for revenue from any class of highway users. Interstate Transit Inc. v. Lindsey, supra; Sprout v. City of South Bend, 277 U. S. 169.

Judgment will go for plaintiff. A permanent injunction will issue and the bonds given under the temporary restraining order will be exonerated.

Dated May 5th, 1936.

Clifton Mathews, Circuit Judge. Albert Lee Stephens, District Judge. (Not Signed) Leon R. Yankwich, District Judge.

(Indorsed:) Filed Jun. 5, 1936. R. S. Zimmerman, Clerk, by Theodore Hocke, Deputy Clerk.

[fol. 136-29] In United States District Court for the Southern District of California, Central Division

Eq. No. 759-S

Howard Morf, Doing Business under the Firm Name and Style of Pacific Wholesale Automobile Company, Plaintiff,

vs.

Ray Ingels, as Director of the Motor Vehicle Department of the State of California, et al., Defendants.

Dissenting Opinion

Yankwich, District Judge:

I dissent.

The main opinion admits that caravaning of automobiles from other states to California has been so extensive as to create a problem. But it denies validity to the California Caravan Act (Statutes of 1935, Chap. 40, California Vehicle Code pp. 174-176) for three reasons: (1) That the classification is arbitrary, in that it does not apply to what is strictly speaking caravaning, i. e., fleet movements of cars on their own wheels, but includes a single car transported from without the state of California, (as the enact-

ment provides) "on its own wheels, or in tow of another motor vehicle for sale." (2) That it is, in reality, a protective tariff against automobiles transported for sale from without the State of California, and thus violative of the commerce clause of the Constitution of the United States (Constitution of the United States, Article I, Section 8) and (3) that the amount of the fee charged for each caravaned automobile is excessive and arbitrary and has no relation to the cost of the added burden upon the state traffic, which might justify the regulation, and is thus violative of the due process and equal protection clauses of the Constitution. (Constitution of the United [fol. 136-30] States, 14th Amendment, Section 1.) Because of the importance of the matter, I state the reasons for my dissent fully. Of necessity, the questions are interrelated. So to a certain extent the principles involved must be treated together.

The power of the Congress to regulate commerce between the states is exclusive and penary, and is not subject to any state restrictions, burdens or limitations. (Gibbons v. Ogden (1824), 9 Wheat. 1, 70; University of Illinois v. United States (1933), 289 U. S. 48.) No state may, through the exercise of the taxing or police powers, establish an economic barrier between the states. (Baldwin v. G. A. F. Seelig, Inc. (1935), 294 U. S. 511; Bingaman v. Golden Eagle Western Lines, Inc. (1936), 80 L. Ed. page 600. However, a state may, in the exercise of its reserved power to regulate intrastate commerce, adopt measures and regulations which affect interstate commerce indirectly and incidentally only, or the persons engaged in it. If such regulations do not impede the free flow of commerce, they will be given validity. (See Boston and Maine Railroad Company v. Armbury (1932), 285 U. S. 234; Clyde Mallory Lines v. Alabama (1935) 80 L. Ed. 191.) So statutes which impose a charge for the use of the highways and facilities of a state by residents of other states or interstate carriers have been sustained. The limits of the exercise of this power have been stated by Mr. Justice Brandeis in Interstate Transit v. Lindsey (1931), 233 U. S. 183, 185:

"While a state may not lay a tax on the privilege of engaging in interstate commerce (Sprout v. South Bend, 277 U. S. 163, 72 L. Ed. 833, 62 A. L. R. 45, 48 S. Ct. 502), it may

impose even upon motor vehicles engaged exclusively in interstate commerce a charge, as compensation for the use of the public highways, which is a fair contribution to the cost of constructing and maintaining them and of regulating the traffic thereon (Kane v. New Jersey, 242 U. S. 160, 168, 169, 61 L. Ed. 222, 227, 228, 37 S. Ct. 30; Clark v. Poor, 274 U. S. 554, 71 L. Ed. 1199, 47 S. Ct. 702; Sprout v. South Bend, supra (277 U. S. 169, 170, 72 L. Ed. 836, 837, 62 A. L. R. 45, 48 S. Ct. 502). As such a charge is a direct burden on interstate commerce, the tax cannot be sustained [fol. 136-31] unless it appears affirmatively, in some way, that *it is levied only as compensation for use of the highways or to defray the expense of regulating motor traffic.* This may be indicated by the nature of the imposition, such as a mileage tax directly proportioned to the use (Interstate Busses Corp. v. Blodgett, 276 U. S. 245, 72 L. Ed. 551, 48 S. Ct. 230), or by the express allocation of the proceeds of the tax to highway purposes, as in Clark v. Poor, 274 U. S. 554, 71 L. Ed. 1199, 47 S. Ct. 702, supra, or otherwise. Where it is shown that the tax is so imposed, *it will be sustained unless the taxpayer shows that it bears no reasonable relation to the privilege of using the highways or is discriminatory.*" (Italics added.)

Some cases intimate that the tax is considered as mere compensation for the damage done to the roads by the driving of automobiles and is based primarily upon the amount of destruction caused by them. (Kane v. New Jersey (1911), 81 N. J. L. 594, 80 Atl. 453.) Notwithstanding this, courts have left it to the legislatures of the various states to determine the form which the exaction should take. Thus (even in the case of interstate commerce carriers) it may take the form of a fee (Kane v. New Jersey (1916), 242 U. S. 160) or of a mileage tax, despite the fact that by the law of the particular state carriers of intrastate commerce are taxed upon the basis of gross receipts. (See Interstate Busses Corporation v. Blodgett (1928), 276 U. S. 245). Nor does the fact that such a tax imposed directly upon an interstate carrier may be in addition to an annual license fee demanded of all persons using automobiles, make the fee a discriminatory exaction violative of the commerce clause. (See Clark v. Poor (1927), 274 U. S. 554; Interstate Busses Corporation v. Blodgett, supra; American Motor Coach

System v. City of Philadelphia (1928), (C. C. A. 3) 28 Fed. (2) 736; Liberty Highway Company v. Michigan Public Utilities Commission (1923), D. C. 294 Fed. 703.) Indicative of the recent trend of the Supreme Court to sustain local impositions or regulations despite their incidental effect upon interstate commerce is Clyde Mallory Lines v. Alabama (1935), 296 U. S. 261. Despite the constitutional [fol. 136 32] inhibition against the laying of duties on tonnage by the states (Constitution of the United States, Article I, Section 10, Clause 3), the Court there sustained a flat harbor fee of $7.50 for vessels of 500 tons and over entering the harbor at Mobile, saying:

"And charges levied by state authority to defray the cost of regulation or of *facilities* afforded in aid of interstate or foreign commerce have consistently been held to be permissible." (Clyde Mallory Lines v. Alabama, supra at page 267.)

In the realm of control of highways, the basis and limits of allowable legislative power is given in Clark v. Poor, supra, at page 557:

"The highways are public property. *Users of them although engaged exclusively in interstate commerce, are subject to regulation by the State to insure safety and convenience and the conservation of the highways.* Morris v. Duby, ante, p. 135; Hess v. Pawloski, ante p. 353. Users of them, although engaged exclusively in interstate commerce *may be required to contribute to their cost and upkeep. Common carriers for hire, who make the highways their place of business, may properly be charged an extra tax for such use.* Hendrick v. Maryland, 235 U. S. 610; Kane v. New Jersey, 242 U. S. 160. Compare Packard v. Banton, 264 U. S. 140, 144.

"There is no suggestion that the tax discriminates against interstate commerce. Nor is it suggested that the tax is so large as to obstruct interstate commerce. It is said that *all of the tax is not used for maintenance and repair of the highways; that some of it is used for defraying the expenses of the Commission in the administration or enforcement of the Act; and some for other purposes. This, if true, is immaterial. Since the tax is assessed for a proper purpose and is not objectionable in amount, the use to which*

the proceeds are put is not a matter which concerns the plaintiffs." (Italics added.)

[fol. 136-33] Similar language is found in Liberty Highway Company v. Michigan Public Utilities Commission, supra, at page 708. In the light of these principles, the imposition of a license tax for the use of the highways of California for caravaning purposes, as defined in the Act, is not a restriction upon interstate commerce. The Act does not attempt to regulate the sale of automobiles from outside of the state or to impose restrictions upon the manner of their sale,—restrictions of the type which Judge Wilbur, Judge Stephens and the writer declared invalid in Asher & Ponder v. Ingels (1936), 13 Fed. Sup. 654.) Nor is it an attempt to compel the acquisition of a license for carrying on an interstate business. It is true that caravaning of automobiles within the state is not prohibited. But there is no evidence before us to justify the conclusion that the practice obtains to any considerable degree, in any case except in the case of automobiles originating outside of the state. And even if it were shown that caravaning is carried on, without restriction, with automobiles originating within the state, I do not think that the enactment would, for that reason alone, be invalid. We would merely have a case of a special restriction applicable to persons who seek to make the highways of the state the locale for carrying on business enterprises and no more unconstitutionally objectionable than the additional exactions sustained in Clark v. Poor, supra, and Interstate Busses Corporation v. Blodgett, supra. The more so as the Act specifically provides (in Section 5) that the fee shall be in lieu of all other registration fees and license fees for the use of the public highways, during the 90-day period for which the permits are granted. Clearly a state may, without violating the interstate commerce clause, exact a fee for the use of its highways for commercial purposes by owners of automobiles originating outside of the state in lieu of other exactions which it imposes upon automobiles within the state.

Nor is there, to my mind, any arbitrariness violative of due process involved in the size of the fee.

The cases in which the size of a fee has been held unreasonable have been cases in which the fee demanded was so out of proportion to the avowed purpose for which it was

[fol. 136-34] being collected as to shock, (as was the case in Interstate Transit v. Lindsey, supra, and Prouty v. Coyne (1932 D. C. S. D.), 55 Fed. (2) 289; and see Young's Market Co. v. Board of Equalization (1935 D. C. Cal.), 12 Fed. Sup. 140) and it was clear to the court that the enactments were, in reality, revenue statutes aiming to tax the right to carry on in-erstate business. But these very cases speak for the validity of a reasonable exaction, without requiring demonstration that the amount is just what is necessary to compensate the state for the use and upkeep of the highways. (See Gundling v. Chicago (1900), 177 U. S. 183.) As is said in Interstate Transit v. Lindsay, supra, at page 190:

"Being free to levy occupation taxes, states may tax the privilege of doing an intrastate bus business without regard to whether the charge imposed *represents merely a fair compensation for the use of their highways.*" (Italics added.)

The services of the state in allowing its highways to be used and in policing them are none the less a service which benefits all (*including the plaintiff*) because, in certain instances, the benefit *may* be greater to other persons than to him. (See Clyde Mallory Lines v. Alabama, supra, at page 194; Aero Transit Co. v. Georgia Commission (1933), 295 U. S. 285.) Few cases exist where the exercise of valid power has been nullified by the mere excessiveness of an impost. As said in A. Magnano Co. v. Hamilton (1934), 292 U. S. 40, at page 47:

"If the tax imposed had been five cents instead of fifteen cents per pound, no one, probably, would have thought of challenging its constitutionality or of suggesting that under the guise of imposing a tax another and different power had in fact been exercised. If a contrary conclusion were reached in the present case, it could rest upon nothing more that the single *premise that the amount of the tax is so excessive that it will bring about the destruction of appellant's business,* a premise which, standing alone, *this court heretofore has uniformly rejected as furnishing no juridical* [fol. 136-35] *ground for striking down a taxing act.*" (Italics added.)

In dealing with the subject of classification, in the exercise of the police power, it is well to bear in mind that it is

impossible to achieve absolute equality. Nor is such equality necessary in order to insure constitutional validity under the due process and equal protection of law clauses of the 14th Amendment to the Constitution. As said by Mr. Justice Holmes, in Patsone v. Pennsylvania (1914), 232 U. S. 138, in an oft-quoted passage:

"*A lack of abstract symmetry does not matter. The question is a practical one, dependent upon experience. The demand for symmetry ignores the specific difference that experience is supposed to have shown to mark the class. It is not enough to invalidate the law that others may do the same thing and go unpunished, if, as a matter of fact, it is found that the danger is characteristic of the class named.*" (Italics added.)

(See also Radice v. New York (1924), 264 U. S. 292; McCary v. United States (1904), 195 U. S. 27; Rast v. Van Denman (1916), 240 U. S. 343, 357; Miller v. Wilson (1915), 236 U. S. 373, 383; Heisler v. Thomas Colliery (1922), 260 U. S. 245; Quaker City Cab Co. v. Pennsylvania (1928), 277 U. S. 389; New York ex rel. Bryant v. Zimmerman (1928), 278 U. S. 64; Fox v. Standard Oil Co. (1934), 294 U. S. 87; A. Magnano Co. v. Hamilton (1934), 292 U. S. 40; In re Miller (1912), 162 Cal. 675; Miller v. Board of Public Works (1925), 195 Cal. 477; Graham v. Kingswel (1933), 218 Cal. 658). These cases show that, in interpreting the exercise of the police or taxing powers, courts have not sought to bind legislative bodies to an abstract or unrealizable ideal of equality. They have insisted merely that there be a reasonable foundation for the classification. When satisfied of its existence, they have sustained it. (See St. Louis R. R. Co. v. Paul (1899), 174 U. S. 404; Petit v. Minnesota (1900), 177 U. S. 164, 168; Williams v. Fears (1900), 179 U. S. 270, 275; Knoxville Iron Co. v. Harrison (1901), 185 U. S. 14; Boxley v. McLaughlin (1915), 236 U. S. 385; Gregg [fol. 136-36] Dyeing Co. v. Query (1932), 286 U. S. 472; Hicklin v. Coney (1933), 290 U. S. 169; Nebbia v. New York (1935), 291 U. S. 502; Bordens Farm Products v. Ten Eyck (1936), 80 L. Ed. 469). A study of these and other cases warrants the following conclusion: If a legislature may, for regulatory purposes, distinguish between barber shop employment and other kinds of labor (Petit v. Minnesota, supra), or between "immigrant agents" engaged in hiring laborers to be employed beyond the limits of a State and

persons engaged in the business of hiring for labor within the State (Williams v. Fears, supra), or exclude chambermaids in rooming and lodging houses or women performers in certain places from the provisions of laws regulating the hours of labor of women (Miller v. Wilson, supra; In re Miller, supra; Radice v. New York, supra), or regulate the hours of labor of pharmacists and student nurses and exclude graduate nurses (Bosley v. McLaughlin, supra) or the manner of payment of wages of employes in certain industries only (St. Louis R. R. Co. v. Paul, supra), if a product, like oleomargarine, may be selected for special taxation so as to discourage its use, in favor of butter (A. Magnano Co. v. Hamilton, supra) if a legislature may require disclosure of the by-laws and membership of one group of oath-requiring association (like the Ku-Klux Klan), and not require it of others (like labor unions, or other fraternal organizations) (New York ex rel. Bryant v. Zimmerman, supra), if an automobile licensing and tax scheme may exclude automobiles of farmers or others from the exaction (Aero Transit Company v. Georgia Commission (1935), 295 U. S. 285; Hicklin v. Coney, supra), if, in the enforcement of an industrial regulatory measure, an administrative body may apply different rules as to price as between well-advertised dealers and independents, giving a differential to one group and not to the other (Borden's Farm Products v. Ten Eyck, supra), a classification which, so far as known includes the whole class, should not be stricken down, merely because of the possibility that it might result in inequality in some individual case. There is no evidence in the record that there is any caravaning within the state. And while it is true that, occasionally, a [fol. 136-37] car may be moved on its own wheels for the purpose of sale within the state, this fact does not militate against the validity of the classification. Such car, of necessity, would have a California registration and would be moved by employes of the owner or of the buyer and would present none of the dangers of out-of-state transportation. So we have a reasonable factual basis for the classification. (See Piper v. Bingaman (1935) (D. C. N. Mex.), 12 Fed. Sup. 755.)

"Of course, the mere fact of classification is not enough to put a statute beyond the reach of the equality provision of the Fourteenth Amendment. Such classification must

not be 'purely arbitrary, oppressive or capricious.' American Sugar Refining Co. v. Louisiana, 179 U. S. 89, 92. *But the mere production of inequality is not enough. Every selection of persons for regulation so results, in some degree. The inequality produced, in order to encounter the challenge of the Constitution must be 'actually and palpably unreasonable and arbitrary.'* Arkansas Natural Gas Co. v. Railroad Commission, 261 U. S. 379, 384, and cases cited." (Radice v. New York, supra, at page 296).

In assaying the classification under discussion, it is well to advert to some of the facts testified to at the hearing which were also before the legislators during the deliberations on the bill. The practice has grown up in the last few years of moving automobiles on their own wheels over the public highways of California to their place of sale. The movement is accomplished by fleets of cars of from eight to thirty or more cars, most of them joined in tandem with two cars driven by one driver. California is a large state with great distances. The caravaning of automobiles has increased traffic hazards, and resulted in many law violations and abuses. The abuses were found to exist only among persons who moved cars on their own wheels from without the state for the purpose of sale. To particularize the conditions and some of the abuses: The automobiles are moved in fleets by the tandem-towing method. Usually, there is no tail light on the towed car. The con-[fol. 136-38] trol of the two cars comes from the brakes of the first car. So the towed car may swing or skid or fail to followed the tow*ed* car on curves. The driver of the towing car has no clear back vision. The movement in fleets makes it difficult to pass caravans moving on the highway. When, as one officer testified, there is trouble and the caravan is halted, a traffic hazard arises. Many stolen and cars with fraudulent registrations are brought in in this manner. The type of drivers employed complicates the problem. They are usually persons without any permanent residence or visible means of support, driving the car not as an occupation, but merely for the purpose of obtaining transportation to California. They do not know the traffic laws of California. Conformance means nothing to them because once the state is reached, their objective has been attained, the El Dorado has been reached. Because these persons have no *o*permanent residence, giving them a sum-

mons to appear means nothing. In many instances, as the testimony showed, the persons cannot, later, be found. The only other alternative, that of arresting them for violation, makes confusion worse confounded. The officer must leave his place on the highway and take the offender before a magistrate. They drive long hours. Many of them have no places to sleep other than in the cars. They become fatigued and careless. All these facts are very important factors in the happening of accidents. Many of the cars so moved have foreign license plates. Without the Caravan Act, they could move over the highways of the state without registration and without identification. These facts present a serious evil with which the California Legislature sought to deal. The evil was of recent origin. There were no legislative precedents for any other method of combating it. The Legislature sought to remedy it by making a charge for the use of its highways for commercial purposes by persons caravaning automobiles. It defined caravaning as "the transportation from without the State of *any motor vehicle* operated on its own wheels or in tow of another motor vehicle, for the purpose of selling or offering the same for sale to or by any agent, dealer, manufacturers' representative, purchaser, or prospective pur- [fol. 136-39] chaser who may be located within or without this state". (Section 1, Statutes of 1935, Chapter 402, California Vehicle Code (1935), pages 174-175.) Had the Legislature sought to exclude single cars operated on their own wheels or units of one towed car, and confined the enactment to fleets of cars, such a classification might have been more difficult to defend than the present one. This because it might have been shown that all these cars originating out of the state caused the same difficulties, irrespective of the size of the caravan. So the Legislature included the whole class which experience had shown brought on the particular evil.

Ours is the duty to stay arbitrary power in legislative action. This duty, however, we must perform in the light of the doctrine laid down by Mr. Justice Roberts in Bordens' Farm Products v. Ten Eyck, supra, at page 473:

Judicial inquiry does not concern itself with the accuracy of legislative finding, but only with the question whether it so lacks any reasonable basis as to be arbitrary." (Italics added.)

In dealing with the exercise of the police power, fairly debatable questions as to "its reasonableness, wisdom and propriety are not for the determination of courts". (Standard Oil Company v. Marysville (1929), 279 U. S. 582, at 584.) Granted that the operation of the enactment may work to the advantage of the dealers in second hand automobiles who purchase automobiles within the State, it is not a constitutional objection to the exercise of the police power of a state that it may foster the development of one form of business and restrict another. (Fox v. Standard Oil Co. (1934), 294 U. S. 871; Sproles v. Binford (1932), 286 U. S. 374; Aero Interstate Co. v. Georgia Commission, supra; Hicklin v. Coney, supra.)

To my way of thinking, the Act contains no discrimination between interstate and intrastate commerce. Nor between persons engaged in the same business and operating the same or similar types of vehicles. The Act aims to cover only one group shown to exist—a group residing within the State, endeavoring to use the highways of the State for the purpose of caravaning vehicles originating [fol. 136-40] out of the State for sale. There is no evidence to show there are any caravans originating within the State operating either between various points within the State or going out of the State. The only Caravaning within the State testified to at the trial was caravaning of automobiles originating outside of the State, in their course, between various points within the State, to their destination. The fee charged is a flat fee and its size is not such as to warrant the conclusion that it is unreasonable. I am thus unable to see in the enactment the violation of either the commerce or the due process or equal protection clauses of the United States Constitution.

Hence my dissent from my brethern.

Dated this 5th day of May, 1936.

Leon R. Yankwich, U. S. District Judge.

(Indorsed:) Filed May 5, 1936. R. S. Zimmerman, Clerk, by Louis J. Somers, Deputy Clerk.

[fol. 137] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF THE POINTS TO BE RELIED UPON BY APPELLANTS, AND DESIGNATION OF THE PARTS OF THE RECORD TO BE PRINTED—Filed October 10, 1936

Come now the Appellants above named, and in compliance with Par. 9 of Rule 13 of the Rules of the Supreme Court, state:

I

The points to be relied upon by appellants are:

The District Court erred in entering its final decree permanently enjoining the defendants (appellants) from enforcing against plaintiff (appellee) the provisions of Chapter 402, Statutes of 1935 of California, and exonerating the bonds given by plaintiff under the temporary restraining [fol. 138] orders herein; and erred in making and entering its findings of fact and conclusions of law; in the following respects:

1

The District Court erred in holding Chapter 402, Statutes of 1935 of California, to be in violation of the Commerce Clause of Section 8 of Article One of the Constitution of the United States, because Chapter 402 does not discriminate against nor impose an unconstitutional burden upon interstate commerce nor otherwise conflict with the Commerce Clause.

2

The District Court erred in holding Chapter 402, Statutes of 1935 of California, to be in violation of the "equal protection of the laws" clause of Section One of the Fourteenth Amendment to the Constitution of the United States, because Chapter 402 does not unconstitutionally discriminate against plaintiff or any other person or deny to plaintiff the equal protection of the laws.

3

The District Court erred in holding Chapter 402, Statutes of 1935 of California, to be in violation of the "due process of law" clause of Section 1 of the Fourteenth Amendment to the Constitution of the United States, because Chapter 402 does not impose unreasonable require-

ments upon plaintiff and does not deprive him of property without due process of law.

4

The District Court erred because on the entire record the plaintiff has failed to sustain the burden of overcoming the presumption of the correctness of the judgment of the Legislature that a valid need of legislation existed and that the class defined in Chapter 402, Statutes of 1935 of [fol. 139] California, includes the entire class properly the subject of such legislation, and has failed to overcome the presumption that Chapter 402 is reasonable and non-discriminatory.

5

The District Court erred in making affirmatively stated findings of fact (22) and (26) to the effect that Chapter 402, Statutes of 1935 of California, discriminates against plaintiff in his operations in interstate commerce in favor of intra-state commerce, because the evidence on the entire record is insufficient to overcome the presumption of the propriety and non-discrimintory character of the classification made by such Act, and because the evidence shows that the class defined in said Act is a distinct class constitutionally subject to separate classification, and that there is no other motor vehicle traffic in California in either intra-state or interstate commerce similar or comparable to that conducted by the included class.

6

The District Court erred in making affirmatively stated findings of fact (8), the last sentence of (9), and (27), and negatively stated findings of fact (4), (6), (7), and (8), to the effect that there are no unusual or serious safety, traffic or police problems created by the movement of vehicles on their own wheels into California for purpose of sale, because the evidence on the entire record is insufficient to overcome the presumption of the correctness of the judgment of the legislature that such problems existed and merited the enactment of Chapter 402, Statutes of 1935 of California, and because the evidence shows that the class defined in Chapter 402 conducts a specialized form of highway traffic, substantially distinct from other traffic, which

[fol. 140] creates substantial safety, traffic and police problems differing from those of other traffic.

7

The Court erred in making affirmatively stated findings of fact (11) and (19) to the effect that plaintiff's sole occupation is that of dealer in automobiles, and in making negatively stated finding of fact (2) that plaintiff's use of the highways is not an extraordinary use or for direct gain or profit or as a place of business, because the allegations of plaintiff's bill of complaint and the evidence show that the principal element of plaintiff's occupation is that of transporting automobiles upon the highways on their own wheels to market for commercial gain.

8

The Court erred in making affirmatively stated finding of fact (20) and negatively stated finding of fact (1), to the effect that Chapter 402, Statutes of 1935 of California, does not exact a charge for the use of the public highways, because the same are not findings of fact but are conclusions as to the interpretation of the terms of the statute not aided by or based on any evidence; and because such Act by its terms shows, and the evidence shows, that the permit fee it requires is exacted, at least in part, as a charge for the use of the public highways for commercial gain.

9

The Court erred in making affirmatively stated findings of fact (21) and (22) to the effect that the permit fee required by Chapter 402, Statutes of 1935 of California, is arbitrarily fixed and unreasonable in amount, because such fee is a police power license fee and is a tax for a commercial use of the highways, and the evidence does not show [fol. 141] that the amount of the fee is excessive either as a police power license fee, or as a tax for the use of the highways; or as both.

10

The Court erred in making affirmatively stated findings of fact (19), (25) and (27) and negatively stated findings of fact (3) to the effect that plaintiff brings cars in singly and not in groups, because the evidence is insufficient to

show that plaintiff does so, but does show that the regular and prevailing practice of those within the class defined in Chapter 402, Statutes of 1935 of California, is to move vehicles in fleets and that plaintiff regularly follows the prevailing practice.

11

The Court erred in making affirmatively stated findings of fact (15), (16), (17), and (7), to the effect that plaintiff attempted to move three particularly described vehicles into California, one singly and two joined, but not in groups with other vehicles, and that plaintiff's specific complaint in this case is the demand by defendants that plaintiff pay upon such specific vehicles the permit fee required by Chapter 402, Statutes of 1935 of California, because plaintiff's bill of complaint does not allege a practice of moving vehicles singly and not in fleets and does not predicate any special claims of unconstitutionality on the ground that the Act applies to singly moved vehicles, but said bill alleges generally that Chapter 402 is entirely invalid and asks that the entire enforcement thereof be enjoined, and does not seek relief with respect to singly moved vehicles or any particular vehicles; and because plaintiff's bill does not claim and the evidence does not show that the vehicles [fol. 142] particularly described in said bill were driven singly and not as part of a fleet; and because there is no evidence of the moving by the plaintiff of the vehicles or of any particular vehicle.

12

The Court erred in making affirmatively stated findings of fact (19) and (14), to the effect that to require plaintiff to pay the fifteen dollars permit fee for each automobile would absorb his profit and ruin his business and a large part of the used car business in California, because there is no evidence to support such finding and because the evidence affirmatively shows the condition of the used car market in California to be such that the purchasers would absorb such permit fee cost.

13

The Court erred in making affirmatively stated findings of fact (7), (23), (27), and (31) in so far as the same attempt to construe Chapter 402, Statutes of 1935 of Califor-

nia, because the same are not findings of fact but are argumentative conclusions as to the construction of Chapter 402 based solely upon the terms of the Act and not upon evidence; and because the evidence sustains the judgment of the legislature as to the necessity of the legislation and the propriety of the classification.

14

The Court erred in making affirmatively stated findings of fact (4) and (6) an dnegatively stated finding of fact (5), because the same are not findings of fact, but are argumentative legal propositions and are incorrect as such.

[fol. 143] II

The parts of the record necessary for the consideration of said points and which should be printed are:

1. Plaintiff's bill of complaint.
2. Temporary restraining order and order to show cause, and returns showing service thereof.
3. Joint return to order to show cause, and joint answer, of all of the defendants.
4. Statement of the evidence, with stipulation approving same, and order and certificate approving such statement.
5. Amended Opinion of the Court.
6. Dissenting Opinion of Judge Yankwich.

(NOTE.—The amended Opinion and the Dissenting Opinion are included in the Statement of Jurisdiction. Please print as part of printed record.)

7. Findings of Fact and Conclusions of Law.
8. Defendants' Exceptions to Findings of Fact and Conclusions of Law.
9. Final Decree.
10. Orders substituting Howard E. Deems as Registrar of the Motor Vehicle Department of the State of California, as a party defendant in place of Russell Bevins, and substituting Ray Edgar as a member of the State Board of Equalization in place of Orfa Jean Shontz.
11. Petition for Appeal to Supreme Court of the United States.
12. Statement of Jurisdiction of the Supreme Court of the United States (as required by Rule 12).
13. Assignment of Errors and prayer for reversal.

14. Order allowing appeal to Supreme Court of United States.

15. Proof of service of copies of the petition for appeal, statement of jurisdiction, assignment of errors, and order allowing appeal, and acceptance of service thereof by Pierson & Block and Ralph K. Pierson as attorneys for Howard Morf, doing business under the firm name and style of Pacific Wholesale Automobile Company (as required by Rule 12).

[fol. 144] 16. Notice of Appearance of Pierson & Block as attorneys of record for United States Fidelity and Guaranty Company and Continental Casualty Company, appellees, and acknowledgment of service of documents (as required by Rule 12).

17. Citation to appellees.

18. Præcipe for Transcript of Record on appeal with stipulation attached.

19. The foregoing Statement of Points and Designation of Parts of the Record to be printed.

U. S. Webb, Attorney General of California, by Frank Richards, James A. Howie, Deputy Attorneys General, Counsel for Appellants.

Service of the foregoing Statement of the Points to be Relied Upon, and Designation of the Parts of the Record to be Printed, and receipt of copy thereof, is acknowledged this 8th day of October, 1936.

Howard Morf, Doing Business under the Firm Name and Style of Pacific Wholesale Automobile Company; United States Fidelity and Guaranty Company, a Corporation, and Continental Casualty Company, a Corporation, Appellees, Pierson & Block, by Samuel P. Block, Their Attorney.

[fol. 145] [File endorsement omitted.]

Endorsed on cover: File No. 40,996. S. California, D. C. U. S. Term No. 456. Ray Ingels, as Director of the Motor Vehicle Department of the State of California, et al., Appellants, vs. Howard Morf, Doing business under the firm name and style of Pacific Wholesale Automobile Company, et al. Filed October 10, 1936. Term No. 456, O. T., 1936.

(8468-C)